READING MATERIAL
ON
EXECUTION

INDEX

EXECUTION

I. INTRODUCTION

Execution is the last stage of any civil litigation. There are three stages in litigation:

1. Institution of litigation.
2. Adjudication of litigation.
3. Implementation of litigation.

Implementation of litigation is also known as execution. A decree will come into existence where the civil litigation has been instituted with the presentment of plaint. Decree means operation or conclusiveness of judgement. Implementation of a decree will be done only when parties has filed application in that regard. A decree or order will be executed by court as facilitative and not as obligation. If a party is not approaching court, then the court has no obligation to implement it *suo-motto.* A decree will be executed by the court which has passed the judgement. In exceptional circumstances, the judgement will be implemented by other court which is having competency in that regard.

Execution is the medium by which a decree-holder compels the judgement-debtor to carry out the mandate of the decree or order as the case may be. It enables the decree-holder to recover the fruits of the judgement. The execution is complete when the judgement-creditor or decree-holder gets money or other thing awarded to him by judgement, decree or order.

MEANING: The term “execution” has not been defined in the code. The expression “execution” means enforcement or implementation or giving an

effect to the order or judgement passed by the court of justice. Simply "execution" means the process for enforcing or giving effect to the judgement of the court.

Supreme Court in *Ghanshyam Das v. Anant Kumar Sinha* [(1991) 4 SCC 379 = AIR 1991 SC 2251], dealing with provision of the code relating to execution of decree and orders, stated as follows:-

> *"so far as the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all aspects. The numerous rules of Order 21 of the code take care of different situations providing effective remedies not only to judgement-debtors and decree-holders but also to claimant objectors, as the case may be In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measures and appropriate time, the answer is a regular suit in the civil court."*

PRINCIPLES WITH REGARD TO EXECUTION OF DECREE AND ORDER

- Provision of CPC relating to execution of decree and order shall be made applicable to both Appeal and Suit.
- A decree may be executed by the court which passed the judgement and decree or by some other court which is having competency to implement the judgement passed by such other court.
- The court which passed the decree may send it for execution to other court either on application of the applicant (decree-holder) or by the court itself.
- A court may order for execution of decree on the application of decree on the application of decree holder (a) by delivery of any property which was in possession of judgement-debtor and decree has been specifically passed concerning such property (b) by attachment and sell of the property of the judgement-debtor (c) by arrest and detention (civil imprisonment) (d) by appointing a

receiver (e) in such other manner which depends upon nature of relief granted by the court.

- Upon the application of decree-holder, the court may issue "percept" to any other court which is competent in that regard.
- All questions arising between the parties to the suit in the decree shall be determined by the court while executing the decree and not by separate suit.
- Where a decree is passed against a party as the "legal representative" of a deceased person and decree is for payment of money out of the property of deceased person, it may be executed by attachment and sell of any such property.
- A judgement-debtor may be arrested at any time and on any date shall required to be brought before the court which has passed the decree and his detention may be in civil prison of the district where decree shall have to be executed.
- Where immovable property has been sold by the court in execution of a decree such sell shall be absolute. The property shall be deemed to be invested in the favour of purchaser, and the purchaser shall be deemed as a party to litigation.
- The court to which decree is sent for execution shall require certifying to the court which has passed decree stating the manner in which decree has been implementing concerning the fact of such execution.

PROCEDURE IN EXECUTION:

Section 51 to 54 talks about procedure in execution or mode for execution:

- Section 51: this section gives the power to court to enforce the decree in general. This section defines the jurisdiction and power of the court to enforce execution. Application for execution of decree under this section may be either oral (order 21 rule 10) or written (order 21, rule 11). Party has to choose the mode of implementation of decree. Court may execute decree as per the choice prayed by the decree-holder or as court may thinks fit.
- Mode of executing decree under section 51: (a) By delivery of any property specifically decreed. Property may be movable or immovable (b) By attachment and sale of the property or by sale

without attachment of the property. (c) by arrest and detention. (d) by appointing a receiver. (e) is the residuary clause and comes into play only when the decree cannot be executed in any of the modes prescribed under clause (a) to (d).

- Section 52 deals with a case where the decree is passed against the legal representative of the judgement-debtor.
- Section 52 (1) empowers a creditor to execute his decree against the property of deceased in the hands of legal representative so long as it remains in his hand. For application of this clause the decree should have passed against the party as the legal representative of the deceased person, and it should be for the payment of money out of the property of the deceased.
- Section 52 (2) empowers a creditor to execute his decree against the legal representative personally if he fails to accounts for the properties received by him from deceased person.
- Exception to section 52:
    1. Court can implement the decree against the personal property of the legal representative provided if he is avoiding, neglecting or evading to make the payment from the property of deceased.
    2. Where he has misutilized the property of deceased and where the legal representative has alienated the property of the deceased person.

- Section 53: Liability of ancestral property.

    No legal representative should be held personally accountable where the suit has been filed against a joint Hindu family unless he has received some property of joint Hindu family.

    Under pious obligation if has received the property of joint Hindu family then will be held liable. Where the decree has been passed against Karta, no execution be made against the son under pious obligation if the decree is passed after partition. Event after partition a son can be held liable if suit was pending before partition.

    The son will be held accountable if after the death of Karta the decree has been executed and son has distributed the property

of Karta among themselves. The member of joint Hindu family will be held liable if Karta has taken debt for moral purpose or family purpose.

The nature of suits determines how decree should be implemented.

Illustration: a promissory note has been executed by the father for the purpose of borrowing money. After the death of father the creditor instituted proceeding against son.

Where suit is filed basing on promissory note first it will be seen that whether suit is maintainable or not- if it is filed within three year then the suit will be maintainable. General rule is that son will be held liable if they have received ancestral property.

Where the son is not having knowledge about execution of promissory note, in such case will not be held liable even though has received the ancestral property.

- Section 54: Partition of estate or separation of share.

  Section 54 comes into play when a decree has been passed for partition, or for the separate possession of a share of an undivided state paying revenue to the government, that is the partition of the state or share will be made by the collector. However if the collector refuses to make the partition of the revenue paying property, the civil court can do so. To attract the provision of this section it is not necessary that the plaintiff should ask for the division of government revenue.

  Section 54 deals with a case where though the civil court has the power to pass a decree yet it is not competent to execute the same. Under this section the execution of decree shall be made by collector.

II. JURISDICTION

Section 38 of the Code specifies that, a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. Section 37 defines the expression 'Court which passed a decree' while sections 39 to 45 provide for the transfer for execution of a decree by the Court which passed the decree to another Court, lay down conditions for such transfer and also deal with powers of executing Court.

U/s.37 the expression Court which passed the decree is explained. Primarily the Court which passed the decree or order is the executing Court. If order or decree is appealed against and the appellate Court passes a decree or order, even then the original Court which passed the decree or order continues to be treated as Court which passed decree. The Court which has passed the decree or order ceased to exist or ceased to have jurisdiction to execute the decree already passed, then the Court which will be having a jurisdiction upon that subject matter, when application of execution is made will be the competent Court to execute the decree.

Merely because the jurisdiction of the Court which has passed the decree is transfered to another Court due to transfer of territorial area, the jurisdiction to execute the decree passed by such a Court is not ceased. However, the Court to whom the transfer of territorial area is made, will also have a jurisdiction to conduct the execution of decree or order. (Sec.37). Sec. 38 contemplates that a decree may be executed either by the Court which passed it, or by the Court which it is sent for execution. However the execution on judgment debtor is criteria of executing Court of territorial jurisdiction.

As a general rule territorial jurisdiction is a condition precedent for a court to execute decree. Neither the court which passed the decree nor the court to which it is sent for execution can execute it in respect of property lying outside territorial jurisdiction. However if the bond is executed before a court it remains in operation till formally discharged by registrar of concerned court. Another important point is that a decree passed by court without jurisdiction is nullity and its invalidity can be set up whenever and wherever it is sought to be enforced even at the stage of execution. A defect of jurisdiction whether pecuniary or territorial strikes at the very authority of the court to pass a decree and such a defect cannot be cured even by consent of parties. Generally an executing court is not required to go behind the decree and it has to execute the decree as it is. It can however examine the issue whether the decree was passed by a court without jurisdiction and may not execute the decree if it finds so. The objection as to dispute on jurisdiction has to be taken at earlier stage and when the judgement debtor did not raise objection on receiving execution application, the execution can be proceeded with. From the point of view of delays the opportunity to challenge at the stage of execution sometimes opens another round of litigation. Objections as to such jurisdictions are raised in mechanical manner, which deprives the decree holder of the fruits of the decree. In respect of territorial jurisdiction, if it is lacking the decree cannot be executed. The court which passed a decree may on the application of the decree holder send it for execution to another court of competent jurisdiction under the provisions relating to transfer of decree.

TRANSFER OF DECREE

Situations warrant that the decree may have to be transferred to some other court for the purpose of execution. The court which passes a decree may on application of a decree holder send it for execution to another court under following circumstances: -

1. If the person against whom the decree is passed actually and voluntarily resides or carries on business or personally works for gain within the jurisdiction of such other court.
2. If the person does not have property within the local limits of the jurisdiction of the court, which passed the decree sufficient to satisfy such decree and has property within local limits of jurisdiction of such other court.
3. If the decree directs the sale or delivery of immovable property situated outside the local limits of the jurisdiction of the court.
4. If the court which passed the decree considers for any other reason to be recorded in writing the decree should be executed by such other court.

The word Court means court of competent jurisdiction.The court to which decree is transferred for execution shall have same powers as the original court and persons disobeying or obstructing the execution of decree are punishable in the same manner. The transferee court however cannot travel beyond the decree. If the matter is transferred from one court to other for administrative reasons say from second court to fourth court both courts are competent.

When a decree is transferred by the Court which passed it to another Court for execution, the documents mentioned in Order XXI, Rule 6, must be sent to the latter Court. The work in connection with the

preparation of these documents should be done by Court officials holding permanent appointments, on payment, in the first instance, by the person applying for the transfer of the decree of a fee of Rs.1/-. The amount so recovered shall be credited to Government under the head “XXI-A—Law and Justice—Courts of Law—General Fees, Fines, and Forfeitures—Fees levied by Courts”. A decree-holder, however, may at his option file with application a copy of his decree duly stamped in accordance with Article 7 of Schedule I, to the Court-fees Act, VII of 1870, and when he does so, he shall be exempted from the fee of Rs.1/-, prescribed in this paragraph, the remaining documents being prepared by the officials of the Court without further payment by the decree-holder.

Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed the decree, the Court passing the decree, shall send the same directly to the former Court. But, where the former Court is situate in a different district the Court, which passed the decree, shall send it to the District Court of the district in which the decree is to be executed. (Order XXI, Rule 5 of the Code).

Under Order XXI, Rule 8 of the Code of Civil Procedure, 1908, a decree sent under the provisions of Section 39 for execution to another district may be executed either by the District Court to which it is sent, or by any Subordinate Court of competent jurisdiction to which the District Court may refer it, and, under Section 42, the Court executing the decree has the same powers of execution as if the decree had been passed by itself. The execution files of such cases should remain with the record of the Court by which the decree is executed, and should not be returned to the Court by which the decree was passed.

A certificate showing the extent to which the decree has been executed is required, by Section 41 of the Code of Civil Procedure, 1908 to be sent to the Court which passed the decree, as to execution so certified, and the particulars should be entered in that Court‟s register of Civil suits under the head „Return of Execution‟ in order to prevent a “double execution‟ being taken out in any other district.

To ensure compliance with order XXI, Rule 6 of the Code the High Court has prescribed a register in Form XXXIIII of part A-IV of High Court Rules and Order, Volume VI-A, Decrees transferred to other courts and those received by transfer are shown on the two sides of the same page in the register.

III. ATTACHMENTS

Attachment of property:

A decree may also be executed on the application of the decreeholder by attachment and sale, or only sale without attachment of property. Sale of property without attachment is not void and attachment is not a condition precedent for sale. The code recognizes the right of the decree-holder to attach the property of the judgment debtor in execution proceeding and lays down the procedure to effect attachment. Sections 60 to 64 and rules 41 to 57 of Order 21 deals with the subject of attachment of property. The code enumerates properties which are liable to be attached and sold in execution of a decree. It also specifies properties which are not liable to be attached or sold. It also prescribes the procedure where the same property is attached in execution of decrees by more than one court. The code also declares that a private alienation of property after attachment is void.

A decree may have to be executed by attachment and sale of JDr's property. Attachment of property in decree for injunction or specific performance is aimed at coercing the J.Dr. to comply with the decree, or to expose him to a penalty in case of disobedience. Attachment in a money decree is primarily for sale of property for eventual satisfaction of the decree out of sale proceeds. Before ordering attachment, the Court must satisfy itself that the J.Dr has attachable interest in the property, and that the property is not exempt from attachment. While ordering attachment of salary regard may be had to the portion of salary not liable to attachment. Certain allowances are exempt from attachment. In execution of a decree for maintenance one third of the salary of J.Dr. is

exempted from attachment. In other money decrees salary to the extent of first four hundred rupees and two third of the remainder are not liable to attachment. Thus, if the J.Dr. gets a salary of Rs. 1000/- the first Rs. 400/- plus two third of the remainder or two thirds of Rs. 600/- i.e. Rs. 400/- in all Rs. 800/- would be un-attachable, leaving only Rs. 200/- available for attachment. Pay and allowance of military men and wages of labourers and domestic servants are exempt from attachment. The Court must then determine the mode of attachment. Attachment can be made by seizure or by an order prohibiting the J.Dr. or other person from dealing with the property or by charging the debtor's interest in the property. When movable property other than agricultural produce is to be attached., it should be actually seized and kept in custody of the attaching officer, except when the property is subject to speedy and natural decay, in which case it may be sold at once. Property which cannot be conveniently removed may be left at the place of attachment in the custody of a respectable person.

Execution by attachment against the Agriculturist:

Before ordering attachment in livestock, the D.H.R. should be asked to deposit sufficient sum for removal of property to Court premises or other place as the Court may direct and also for its maintenance and guarding. Property attached may be placed in custody of D.H.R. for removal and conveyance to the place appointed by the Court. Growing crop shall not be attached at any time less than 20 days before it is likely to be fit to be cut or gathered. When crop is attached warrant of attachment should be affixed on the land where the crop is growing, or if the crop has been cut or gathered, on the threshing floor, on the house in which the J.Dr. resides, and shall also be sent to the Collector. Order for

attachment of crop should specify the time at which the crop is likely to be fit to be cut or gathered. The J.Dr. may be allowed to cut and gather the crop and if he fails the D.Hr. may be allowed to do the needful. All objections to attachment, including questions of right, title and interest in the property attached, have to be decided by executing Court and not by a separate suit. When decree is satisfied the attachment is removed. When the execution application is for any reason dismissed the court has to indicate the period upto which the attachment shall continue. If the Court fails to pass such orders, attachment shall cease at the expiry of period of appeal.

Sale of property:-

A decree may be executed by attachment and sale or sale without attachment of any property. Section 65 to 73 and rules 64 to 94 of Order 21 deals with the subject relating to sale of movable and immovable property. Before ordering sale, the court has to decide whether it is necessary to bring entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and decree to be satisfied is small the court must bring to sale only such portion of the property the proceeds of which would be sufficient to satisfy the claim of the decree holder. Properties which are liable to attachment and sale in execution of a decree :- 1. Lands 2. Houses or other buildings 3. Goods 4. Money 5. Banknotes 6. Cheques 7. Bills of exchange 8. Hundis 9. Promissory notes 10. Government securities 11. Bonds or other securities for money 12. Debts 13. Shares in corporation and 14. All other salable property whether movable or immovable.

Attachment of decrees:-

As per Order 21, R.53 decree for mesne profits if ascertained or unascertained, decree for arrears of rent, any order for restitution of costs (however, a right to recover mesne profits by way of restitution by reason of reversal of the decree in appeal cannot be attached under this rule) which are held to be money decree and hence those decrees can be attached under this provision. A decree for possession of immovable property, or a decree for foreclosure or a preliminary decree for partition, shall be attached under this provision. A decree for partition, mesne profits and costs comes within the purview of Order 21, Rule 53 (4). This rule makes a distinction, as to attachments, between decree for the payment of money or for sale in enforcement of a mortgage or charge, and other decrees. A mere order for attachment will not effect the attachment of a decree under this provision. Where an exparte which has been attached in execution of another decree is set aside on the application of the J.Dr and a fresh decree in favour of the plaintiff is passed after trial on the merits, the original attachment must be taken to be revived as soon as a fresh decree on the merits is passed.

Attachment of immovable property:

As per Order 21, R.54 deals with attachment of immovable property and the directions as to the mode of attachment mentioned therein are not merely directory but mandatory. This provision deals with the word “attachment”' mentioned in Or 21, Rule 64. Attachment before Judgment is actually not an attachment in execution as there is no decree in existence on the date of attachment. Yet, such attachment become an attachment in execution after the decree has been passed and after an application to

executed such decree is made. An omission to have the drum beaten as required by the rule is material irregularity which will vitiate the execution sale. If a copy of proclamation order should be affixed on a conspicuous part of the property. If this is not done, it is also a ground to set aside sale, as it is a material irregularity. Any defect or error in the mode of attachment is only an irregularity which does not render the sale *ipso facto* void.

Removal of attachment after satisfaction of the decree—

As per Order 21, Rule 55, in the following circumstances, the attachment may be terminated:

(1) When all the costs and charges of the decretal amount are paid into the Court.

(2) Satisfaction of the decree is otherwise made through the Court or certified to the Court.

(3) The decree is set aside.

(4) On furnishing the required security by the J.Dr.

(5) By compromise between the parties.

(6) By an express order withdrawing or putting an end to the attachment.

(7) By sale of the attached property in execution of the decree.

(8) By abandonment of the attachment by the decree-holder.

The modes in which various properties may be attached are as given below:-

TYPE OF PROPERTY	MODE OF ATTACHMENT
1. Movable property in possession of judgement debtor	by actual Seizure and sale if the property is subject to speedy and natural decay.
2. Movable property not in possession of judgement debtor	by order prohibiting person in possession from giving it to

	judgement debtor.
3. Negotiable instrument	by actual seizure and bringing it to court.
4. Debt not secured by a negotiable Instrument	By an order-prohibiting creditor from recovery of the debt and debtor from paying the debt with a directive to deposit the amount in court.
5. Share in a company	by an order prohibiting the holder from transferring it or receiving dividend.
6. Share or interest in movable property	by notice to the judgement debtor prohibiting him from transferring or charging it.
7. Salary or allowance of employee	by an order that amount shall be withheld from such salary or allowances.
8. Partnership property	by making an order of 1. Attaching the interest share of the partner and partnership. 2. Appointing a receiver of the share. 3. Directing production of accounts. 4. Ordering sale of such interest.
9. Property in custody of other court or officer	by notice requesting that such property may be held subject to order of the court
10. Decree for payment of money or Sale in enforcement of a mortgage or a charge.	By an order of such court.
11. Agricultural produce	By affixing copy of warrant on the land and on the house where judgement debtor resides.
12. Immovable property	By an order prohibiting judgement debtor from charging or transferring it.

Attachment has been described as seizing another's property and involves the act or process of taking, apprehending or seizing the property and bringing the same in custody of the court. It is mainly used to seize the debtor's property in order to secure the claim of the creditor. The orders of attachment if promptly passed may effectively prevent the judgement debtor from transferring his property and expedite the compliance of decree including payment of money.

IV. CLAIM PETITIONS

As per Order 21, R.58, Where claim petition is filed, the sale may be postponed. The claimant or objector should satisfy the Court that at the date of the attachment, he had some interest in, or was possessed of, the property which has been attached. If the Court considers that the claim application was designedly or unnecessarily delayed, no such investigation shall be made. The order made under this rule shall have the same force as if it was a decree. If the property attached has already been sold, no such claim or objection shall be entertained. Under this rule, all questions (including questions relating to right, title or interest in the property attached) arising between the parties or their representatives, relevant to the adjudication of the claim or objection, shall be determined the Court with the claim or objection and not by separate suit. Useful rulings as to this provision. If the claim is rejected under the proviso of Order 21 Rule 58 (1), a separate suit is maintainable. Claim petition is not maintainable if the decree sought to be executed is a mortgage decree since there is no attachment.

Objection to attachment of property under Order XXI, Rule 58, are frequency responsible for great delay in the disposal of the execution cases. Such objections are at time collusive and should be scrutinised with care and disposed of promptly. Adjudication of such objections or claims should be confined to the points indicated in Rules 58 and 59 of Order XXI. Adjudication of any claim or objection is appealable like a decree. When the Court dismiss any claim or objection under Order 21 Rule 58(1), the party may file an application under Section 151 CPC for restoration and for re-investigation or he may also file a suit under Order 21 Rule 58(5) within one year from the

date of dismissal for default. It should be noted if an objection appears to have been "designedly or unnecessarily delayed" (or where, before the claim is preferred or objection is made, the property attached has already been sold), the Court has power to refuse (adjudicate) the claim and dismiss the petition and leave the petitioner to institute a suit under sub-rule (5) of Rule 58, Order 28 CPC for the purpose.

V. LIMITATION

EXECUTION PROCEEDINGS – LIMITATION PRESCRIBED UNDER THE LIMITATION ACT 1963

Art No.	Description of application	Period of limitation	Time from which period begins to run
1	2	3	4
124	For a review of judgment by a Court other than the Supreme Court.	Thirty days	The date of the decree or roder.
125	To record an adjustment or satisfaction of a decree.	Thirty days	When the payment or adjustment is made.
126	For the payment of the amount of a decree by installments.	Thirty days	The date of the decree.
127	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Sixty days	The date of the sale.
128	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days	The date of the dispossession.
129	For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.
134	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.
135	Mandatory Injunction	Three years	The date of the decree or where a date is fixed for performance, sch date.

136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court.	Twelve years	(When) the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place. Provided that an application for the endorcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
137	Any other application for which no period of limitation is provided elsewhere int his division.	Three years	When the right to apply accrues

VI. CONCLUSION

From the above discussion it clearly appears that execution is the enforcement of decrees and orders by the process of court, so as to enable the decree-holder to realise the fruits of the decree. The execution is complete when the judgement-creditor or decree-holder gets money or other thing awarded to him by the judgement, decree or order.

Order 21 of the code contain elaborate and exhaustive provision for execution of decrees and order, take care of different type of situation and provide effective remedies not only to the decree-holder and judgement-debtors but also to the objectors and third parties.

A decree can be executed by various modes which include delivery of possession, arrest and detention of the judgement-debtor, attachment of the property, by sale, by appointment of receiver, partition, cross-decrees and cross-claims, payment of money etc.

On exceptional situation, where provisions are rendered ineffective or incapable of giving relief to an aggrieved party, he can file suit in civil court.

INTERROGATORY PRESENTATION ON EXECUTION

Definition

The word **"Execution"** is not defined in the Code of Civil Procedure. It simply means the process for enforcing the decree that is passed in favour of the decree-holder by a competent court.

As per Rule 2 (e) of Civil Rules of Practice **"Execution Petition"** means a petition to the Court for the execution of any decree or order.

As per Rule 2(f) Civil Rules of practice **"Execution Application:"** means an application to the Court made in a pending execution petition, and includes an application for transfer of a decree.

The Relevant Provisions on Execution in Code of Civil Procedure and Civil Rules of Practice are:

1. Sections 36 to 74, Sections 144, 146 & 148 Code of Civil Procedure and Order 21.

2. Chapter XVI Rules 205 to 285 of Civil Rules of Practice.

3. Articles: 125 to 129, 134 to 137 of Limitation Act

Jurisdiction

As per Section 37 of Code of Civil Procedure, the decree can be executed by the court which passed the decree and as per section 38 of Code of Civil

Procedure the court to which the decree is transferred, have jurisdiction to entertain the Execution Petitions.

Can the execution court go behind the decree?

No, the execution court can not go behind the decree

See ➔

Sunder Dass -Vs- Ram Prakash (AIR 1977 SC 1201)

Hira Lal Patni -Vs- Sri Kadi Nadh (AIR 1962 SC 199)

Vasydev Dhanjibhai Modi –Vs- Rajabhai-Abdul Rehman & Others (AIR 1970 SC 1475)

When there is a conflict between the judgment and decree, whether execution court can look into the judgment ?

Yes ; when there is a conflict between the judgment and decree and if the decree is not properly / happily drafted, the executing court can look into the judgment to know the intention of the court.

See ➔

G.Ramayya Vs. Y.Bayanna (1974 (2) An.W.R 14 (SN) –

*(S.B.I, Petitioner Vs. Maa Sarada oil mills & others (*A.I.R. 2003 Gau.22)

Whether The Executing Court can go through pleadings and proceedings upto decree to know the intention of the trial court in passing decree - **Yes**

Bhavan Vijaya and others Appellants Vs Solanki Hanuji Khodaji Mansang and another Respondent (AIR 1972 SC 1371)

If the trial court is not having inherent jurisdiction or if the decree is a nullity on the face of the record, the executing court can refuse to execute the decree.

No territorial or pecuniary jurisdiction, the decree is valid unless prejudice is caused.

Hasham Abbas Sayyad *-Vs- Usman* Abbas *Sayyad AIR 2007 SC 1077*

<u>If the property situated in different courts</u> – Or.21 Rule 3

Please Refer:

Mohit Bhargava Vs Bharat Bhushan Bhargava and other – (2007 (3) SCJ 735

<u>IV - Transfer of Decree</u>

Read Sec.39 C.P.C O.21 R.5 & 6 Procedure

Sec.39 (4) – Person and property outside the Jurisdictional court – cannot be executed.

Powers of the transferee courts Sec.42 C.P.C.

Form No.52 of Civil Rules of Practice Application Order Form-3

Appendix E of C.P.C

Rule 206 of Civil Rules of Practice (apart from sending the decree through a messenger, the copy of the decree and the decree transfer proceedings must be sent by post in confirmation of sending decree through a messenger)

Certificate of Non-satisfaction Form.no-4, Appendix.E of C.P.C

Certificate of Execution - Form no.5 of C.P.C

<u>V- Stay of Execution</u>

Order 21 Rule 26 to a **<u>limited period</u>** to facilitate the Judgement debtor to obtain necessary stay orders from the trial court, which passes the decree.

Meda Harikrishna –Vs- Akula Sehsmma

(2009 (1) ALT 846.)

A third party cannot file a petition to stay the execution U/O 21 R.26.

Order 21 Rule 29 grant of stay of execution under particular circumstances.

VI- Whether Caveat petition *U*/Sec 148-A C.P.C is maintainable -? - No -

Eknath Kiva Akhadkar & Others -Vs- Administrative (A.I.R. 1984 Bom. 114)
Chloride India (L) -Vs- Ganesh Das Ramgopal (A.I.R 1986 Calcutta 74)

Kattil Vijalil Parkkum Kailoth –(Tribunal & D Etc)Moideen – Vs- Mannial Paadikayil Kadeesa Umma & Others (A.I.R. 1991 Ker. 411)

VII – Precepts

S.46 Form No.2 Appendix – E CPC

VIII Can the Execution Court grant Instalments? No -

As per Article 126 of Limitation Act, necessary application must be filed within 30 days from the date of the decree for grant of instalments.

Please refer:

2002 (1) ALD 169 (D.B)

Seelam Ramadevi Vs Gandi Raju Yanadi Raju (2008 (4) ALD 366)

Khadar Baba Fancy Stores, Visakhapatnam Vs GPG Chit Funds Pvt. LTD and other (2008 (5) ALD 711)

IX - Payment out of Court:

- Please see Order 21 Rule 2 (2) CPC

- Article 125 of Indian Limitation Act

P. Narasaiah -Vs- *P.* Rajoo Reddy *(*AIR 1989 AP 264)

Somu Adinarayana –vs- Balanagu Subba Rao (died) per LR (2007 (2) ALT 638

Adjustment in any other decree must also be recorded within one month.

Padmaben Bansulal and another Vs Gogendra Rathod and other (AIR 2006 SC 2161)

Simultaneous Execution – See Order 21 Rule 21

Gudivada Muneyamma –vs- Jawardhal (2006 (6) ALT 587)

Rapuolu Sudhar -vs- Govt. of A.P. (2007 (2) ALT 205)

In a composite Decree whether DHR has to First exhaust his remedy against the property before proceedings against person – No

Please refer:

State Bank of India Appellant Vs M/s Index port Register and other Respondent (AIR 1992 SC 170)

CH.Sankar Reddy Vs Andhra Bank Rep. by its Manager Darga Mitta, Nellore and others (2006 (4) ALT 427)

Execution of different kinds of decrees

1) Simple money suit :- By arrest

2) **Mortagage Decree** By attachment and sale

3) Maintenance Decree

Limitation 12 years – Art.136 of Limitation Act

The decree cannot be executed against the Government within 3 months from the date of decree under Sec.82 (2) C.P.C.

Mode of Execution

Arrest Attachment & Sale

Arrest

Whether there are any limitations:

Women are exempted from arrest in execution of money decree (Sec.56 C.P.C)

Certain class of persons are exempted from arrest (Sec.55 (2) CPC)

If the decree is for not more than Rs.2000/-, arrest cannot be ordered.

For **restrictions** on arrest read Sec. 135 and Sec.135-A C.P.C.

Steps to be taken before ordering the detention of the J.Dr. in Civil prison.

(a) issue notice under Order 21 Rule 37 – Form No.12/Appendix E of CPC

(b) If J.Dr. fails to appear in response to Rule 37 notice; then Rule37 (2) warrant must be issued for production of the J.Dr. – Form No.13/Appendix E of CPC

(c) If J.Dr appears in response to Rule 37 notice or if the J.Dr is produced on Rule 37(2) Warrant of arrest, means enquiry must be conducted under Order 21 Rule 40 CPC.

The Court has to inform the JDR that he is at liberty to file insolvency proceedings – Sec.55 (3) CPC

If the JDR expresses his intention to file I.P within one month he can released on security. Sec.55 (4) CPC

If the J.Dr is prepared to give security when he is produced under Rule 37(2) Warrant, he must be released.

If the JDR obtains protection order U/s 23 of Provencial Insolvency Act the JDR must be released.

If J.Dr has refused to give security, he can be kept under Court guard custody [O.21 R.40(2)] F/14A/Appendix E CPC and the Court should conduct **means** enquiry expeditiously.

The Court has to inform that the J Dr is at liberty to file insolvency proceedings.

(d) to order arrest of the J.Dr who is a Government Servant, a seven days prior notice must be given to the Head of the Institution.Rule 241 civil rules of practice

(e) The subsistence allowance must be paid by the D.Hr. see Rule O.21 R.39(1) of C.P.C.

(f) while conducting the means enquiry, Sec.60 of C.P.C. must also be taken into consideration

(g) enquiry as to means is necessary : read

R.V.J.Sastry Vs.Bank of India (1978 (2) A.L.T.335)

Kasi Subbaiah Mudali _vs_ Kasi Veraswamy Mudali & Others(2002(3) A.L.T. 240)

K. Manoharan –vs- A.V.Subbanna (AIR 2002 Mad. 340)

K.Harikrishna Vs.Dr.L.Raghunatha Rao 2004 (5) ALT 52)

No detailed enquiry is necessary as in a Civil suit. Please Read -

(K.Munirathnam Vs. D.Bhaskar Naidu)2006 (4) ALT 169

Challa Sivakumar Reddy Vs Kudumula Surender (2008 (1) ALT 335) (Standard of Proof)

(h) The grounds to detain the JDR in civil prison See Sec.51 proviso

(i) The period of detention in civil prison – Sec Sec.58 (1) CPC. If the decretal amount is between Rs.2000/- to Rs.5000/-, upto 6 weeks and if the decretal amount is more than Rs.5000/-, upto 3 months (maximum period of detention in a civil prison must not be more than 3 months)

(k) Even before sending the J.Dr to civil prison, J.Dr can be released on furnishing security and also can be kept in court guard custody for not more than 15 days, to enable J.Dr to pay the decretal amount.

O.21 R.40(3) proviso :

Warrant of Commiittal – Form No.14A/Appendix E of CPC {A.P.Amendment}

When can be released

Read Sec.58 and Sec.59 release Order F/15/E/CPC

To whom subsistance allowance must be paid

Order 21 Rule 39 (2)

Order 21 Rule 39 (3)

Order 21 Rule 39 (4)

Under Sec.57 amount is to be fixed by the Government. If the scales are not fixed by the court - Order 21 Rule 39 (2)

J.Dr cannot be rearrested on release, for execution of the same decree. See Sec.58(2) C.P.C

Expenses can be taken as costs of the suit (Or.21 Rule 39 (5)
J.Dr can not be rearrested for recovery of the said sum.

S.417 of Cr.P.C. --- J.D.R. is in Judicial Custody in Criminal Case.

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY:

i) The Court which can sell the immovable property – Small Causes Courts cannot sell the property, original courts only can sell the property.

If the decree of the Small Causes Court is to be executed by sale of the property, the same has to be transferred to the original court under Or.21 Rule 4 C.P.C.

ii) The property which cannot be sold in execution – See Sec.60 (1) (c)

iii) The D.Hr can issue a notice to the J.Dr. to furnish the details of the property. The J.Dr can be examined. The J.Dr can be directed to file an affidavit in respect of his properties. If J.Dr. fails to file such an affidavit, he can be sent to civil prison upto three months.

Affidavit form No.16A – Apeendix E of CPC.

Such a notice can also be issued if the J.Dr is a corporation.

Read Order 21 Rule 41.

iv) Attachment - Fresh Attachment is not necessary if (a) the property is attached before the judgement (b) in the mortgage decree (c) the properties are charged properties.

How an attachment can be made:

Order 21 Rule 54 – A.P.Amendment, -FormNo.24/App.E/CPC

Order 21 Rule 55 – raising of attachment

As per Sec.64, sale is void during the subsistence of the attachment

Order 21 Rule 57- Order as to the raise of the attachment

Sec.63 : Attachment by several Courts:

Parachuri Veerayya –Vs- Yalavarti Veeraraghavayya (AIR 1961 AP 298)

Claim petition:

Order 21 Rule 58

See Rule 246, 247 of Civil Rules of Practice

Form No.66 of Civil Rules of Practice

As per Order 21 Rule 58 (2) C.P.C. the claim must be between the parties and their representatives and separate suit is not maintainable.

If the claim is rejected under the proviso of Order 21 Rule 58 (1), a separate suit is maintainable.

Claim petition is not maintainable if the decree sought to be executed is a mortgage decree since there is no attachment

T.Nabi Sab Vs G.Venkateswrlu and another

2008 (4) ALD 770

The claim petition must be filed before the sale.

Pl.refer for meaning of "**Sold"**

M/s Magunta Mining co –vs- M. Kondaramireddy and antoher (AIR 1983 A.P. 335)

Kancherla Lakshminarayana –vs- Mattaparthi Shaymala & others (AIR 2008 S.C. 2069)

The attachment made before the judgment can be questioned in E.P Please refer

Alladi Eeswarappa Vs M.Krishna Reddy and another (1963 (2) An.W.R 348)

Stay of Sale is under Order 21 Rule 59 under circumstances

Along with the attachment, notice must be sent to J.Dr for his appearance as per Order 21 Rule 54 (1-A)

Filing of the Petition – Rule 258 and Form No.67 of C.R.P.

There must be **test** by Amin/bailiff if the properties are

1) Charged properties
2) Mortgaged properties &
3) Attached before judgment

Order 21 Rule 66 – Rule 259 of C.R.P.

Form No.30 of Appendix –E of C.P.C.

Mode of proclamation – Order 21 Rule 67, Rule 274 and Form No.70 of C.R.P.

Rule 272, Form No.68 of Civil Rules of Practice.

If the properties are mortgaged with L.M.Bank – See Rule 276

Documents to be filed:

1) Sale Affidavit
2) E.C. for 12 years
3) Arrears of Taxes
4) Sale papers

Leave to bid by D.Hr.

Order 21 Rule 72 (1) (3) C.P.C.

Order 21 Rule 72 A (1) (2) (in case of mortgage decree holder)

Rule 277 of Civil Rules of Practice

Upset price can be reduced – Dr.A.V. Natarajan & Others –vs- Indian Bank Madras (AIR 1981 Mad.151)

Even in Mortgage decree, upset price can be reduced (under certain cirucumstances) See Federal Bank Ltd –Vs- K. Sreedharan & Others (AIR 2003 Kerala 199)

Dr. Prabhakar Naidu –Vs- T. Rghava Reddy (2009 (1) ALD 76)

Mortagage Decree - Reduction of upset price.

Court cannot reduce the upset price – P. Rama Reddy –Vs- P. Sundara Rama Reddy & Others (AIR 1986 AP 29)

Private Sale of Property by J.Dr to raise the amount

Order 21 Rule 83 and its proviso

In case of mortgaged and charged property, the provision is not applicable.

Appendix –E, Form No.35 C.P.C.

Adjournment of Sale

Order 21 Rule 69

Time of Sale

Proclamation must be 15 days prior to the date of sale in case of immovable property and 7 days in case of movable property.

With the **written consent** of the J.Dr, the sale can be on earlier date under order 21 Rule 68.

Somisetti Ganga Raju -Vs- Dr. Ramalingam (AIR 2007 AP 198)

Proclamation not containing valuation of either party but only decree amount , such proclamation is not valid.

Normal steps for sale are:

Proclaim and sale call on	01-05-2009	Proclamation of sale
Further hearing date	08-05-2009	Form 29/App.E/CPC
Publish in Janatha Daily		

Sale Warrant preparation batta must be paid one week prior to the date of sale.

On the date of the sale, the sale must be knocked down in favour of highest bidder. If D.Hr is the auction purchaser, he is entitled for set off.

Immediately after the sale, 25% of the sale amount must be deposited under Order 21 Rule 84.

As per the Process Fee Rule III(5) a fee by way of poundage shall be levied on purchase money for each lot separately at the following rates

(i) On the first Rs.500, Rs 0.10 paise in the rupee

(ii) On the next Rs.500 Rs 0.05 paise in the rupee or part thereof

(iii) On any sum exceeding Rs.1000 Rs 0.03 paise in the rupee

As per Rule 278 of Civil Rules of Practice the court officer who conducted the auction has to purchase court fee stamp for the value of the poundage.

Even if the D.Hr is the auction purchaser he has to pay the poundage. (These amounts can be taken as cost of E.P.)

Payment made by cheque or bankers cheque is valid Akula Srinivasa Rao & Others petitioners Vs G.Venkateswara Sarma Respondent

– **AIR 2003 AP 407**

The balance to be deposited within 15 days under Order 21 Rule 85 C.P.C. As per A.P. Amendment, the amount for purchase of the stamps must also be deposited.

Whether t**he Court has power to extend the time for deposit of the balance amount and the amount for purchase of the stamps - No**

Please refer (Mudragada Satyanaraya Murthy Vs. Southern Agencies (AIR 1962 A.P. 271)

W. Veerabhadra Rao –vs- Nedungadi Bank Ltd Vijayawada and others (1998 (6) ALT 216)

(Kudiyala Ramana Vs. Vattikolla Somaraju) (AIR 2003 A.P. 215)

<u>If the mistake lies with the Court-</u>

Please refer:

Ambati Raghavulu –vs- Mova Venkamma and others (AIR 1962 AP 334)

Rosali V. Vs Taico Bank and others (AIR 2007 SC 998)

<u>Steps to be taken after the sale</u>

There must be Nazir's report vide Rule 276 of C.R.P. Form No.71 of C.R.P.

E.P. must be called on further hearing date.

In default of payment of balance amount, the amount paid shall be forfeited under Order 21 Rule 86. E.P. must be posted for fresh sale.

If the amount is paid, the E.P must be posted after 60 days for confirmation of sale.

<u>Reteable Distribution (</u>S.73 CPC)

Pl.Refer

Thummlapenta Dhana Lakshmi, Petitioner Vs Pulipati Subbarayudu Resondent (AIR 1954 Madras 581
Jagadish Vaisnav -Vs- Farpos Heading Cateror
(2002 (4) ALT 718)
Kanakam Srinivasa Rao -Vs- Ganga Venkateswar Rao
(2002 (6) ALT 201)
E.Subba Reddy –Vs- G. Dhanunjaya and Others

(2006 (6) ALD 244)

Claim Petitions

i) Under Order 21 Rule 89 C.P.C. payment can be made by J.Dr or other persons. He has to pay auction amount and another 5% of the amount.

Rule 278 and Form No.72 of Civil Rules of Practice.

As per Art.127 of the Limitation Act, a petition can be filed within 60 days and the deposit must be within 60 days from the date of the sale. O.21 R.92(2) CPC.

Please refer

P.K.Unani –vs- Nirmal Industries and others
(AIR 1990 SC 933.)

ii) **Claim Petition under Order 21 Rule 90** on the ground of material irregularity – Form No.36 C.P.C. Appendix E CPC.

iii) **Claim petition can be filed under Order 21 Rule 91** by purchaser that J.Dr has no saleable interest – Form No.37 C.P.C. Appendix E CPC.

Sale shall not be set aside on the death of the J.Dr. before the sale, but after the service of proclamation of sale (O.21 R22-A).

Confirmation of the Sale:

The Bench Clerk has to put up a note that

i) No application under Order. 21 Rule 89, under Order 21 Rule 90 or Order 21 Rule 91/ is filed and dismissed.
ii) Balance sale consideration is paid
iii) Money for purchase of stamps paid

Next step will be **sale is confirmed** :-Order 21 Rule 92

Issue sale certificate: Order 21 Rule 94
Appendix –E Form No.38 C.P.C.
Rule 282 of C.R.P.

U/s 17 (2) (XII) and U/s 89 of Regisgtration Act,Registration of the Sale certificate is not compulsory registrable document. But, the document must be sent to Sub-Registrar for necessary entries.

Delivery :

O.21 R.95
Order 21 Rule 96; tenant
Appendix-E, Form No.39 C.P.C. - AP Amendment.

Limitation : one year (Art.134 of Limitation Act)
(Patnam Khader Khan Vs. Patnam Sardar Khan) (1996 (5) SCC 48)

Resistance: **Order 21 Rule 97**, Form No. 40 Appendix E CPC
Sec.74 CPC – 30 days imprisonment
Order 21 Rule 98, Warrant; Form No.41/App.E/CPC

Enquiry O.21, 99, 100 and 101.

The properties that cannot be attached.

Pl.Read Sec.60 CPC under which certain properties are exempted from attachment and sale.

The properties that can be attached:

a) Immovable properties (O.21 R.54)

b) Movable properties: Warrant of attachment – Form No.8/app.E/CPC
Bond for safe custody of]
Of movable properties] - Form No.15 A/app.E/CPC
attached]

O.21 Rule 43

Rule 252 of CRP (procedure for attaching movables)

Rule 253 of CRP (attachment of cash and jewels) Sec.62 CPC

Rule 254 of CRP (custody of fire arms)

c) Attachment of standing crops and agricultural produce Sec.61 CPC

Order 21 Rules 44 & 45

d) Attachment of debt/share/other property not in possession of J.Dr.

(Garnishee procedure) O.21 Rule 46, 46-A to 46-I

e) Attachment of Decrees

O.21 Rule 53 – Form 22/App.E/CPC – Notice u/Form 23/App.E/CPC

Rules 243, 244, 245 of C.R.P.

Form Nos.63, 64 & 65 of Civil Rules of Practice

f) Attachment of salary: Form 19/App.E/CPC

O.21 Rule 48 Government Servant

O.21 Rule 48-A Private Employee

Salary particulars must be called for – M.G.Brothers Finance Ltd –Vs- J.Badharinath & Others (2006(3) L.S.421)

O.21 R.48 (1) – Attachment of salary of Govt.Servant residing in another town – Attachment can be made inview of Sec.39 (4) CPC - Yes

Please Refer:

Selam Advocate Bar Association, Tamilnadu Vs Union of India (AIR 2005 SC 3353)

Janapathi Jaipal Reddy –Vs- Sunnihitha Chit Funds Pvt Ltd, rep.by its Foremen, Karimangar and others(2009 (5) ALT 17)

Amount payable under voluntary retirement scheme (VRS) is not exempt from attachment Repati Venkata Ramana –Vs- K. Venakteswararao Patnayak {1993 (2) A.L.T. 393}

Pension amount deposited in the bank is liable for attachment S.Nagappa –vs- KP Hanumappa {2004 (2) A.LT. 364}

Pension and gratuity once reached the hands of employee concerned, the exemption ceases. Bandi Chinna Ramalinga Reddy @ Chinna Ramalingaiah –Vs- Nellory Srinivasulu & others {2006 (3) A.L.T. 205}

Please Refer:

(Union of India Vs Jyothi Chit Funds and Finance and others (1976) 3 SCC 607)

Union of India Vs Wing Commandar R.R Hingorani (1987) 1 SCC 551

Radhe shyam Gupta Vs Punjab National Bank and another (2009 (1) ALD 79 (SC)

Memo Dt.10-07-2009 issued by the Government

g). Negotiable instruments

O.21 Rule 51 – Order in -Form No.20/App.E/CPC

h). Decree for rent and future mesne profits

O.21 Rule 42

4) . Execution of Decree for possession of movable and immovable properties.

O.21 Rule 31 – Possession of movables – Form 9/App.E/CPC

O.21 Rule 35 – Possession of Immovble properties - Form No.11/App.E/CPC

Delivery can be made even if there are constructions made during the pendency of the suit

Please Refer:

B.Gangadhar Petitioner Vs B.G.Rajalingam Respondent (AIR 1996 SC 780)

Kotakadi Lakshmi Devi Vs Badam Nageswara Reddy (1999 (3) ALT 278)

O.21 Rule 36 – Delivery of immovable property when in occupancy of Tenant.

5) . Decree in partition suit

In the first instance, a Preliminary Decree shall be passed. Later on application of either party, a Final Decree will be passed allotting particular property to a particular party.

Pl.Refer : Dr.Chiranji Lal (D) by LRs Appleants -Vs- Hari Das (d) By LRs Respondents. (AIR 2005 SC 2564)

On the filing of E.P. the particular property that was allotted, will be delivered through the process of Court by issuing Delivery warrant.

6) Execution of Decree in simple injunction suit:

O.21 Rule 32
1. by attachment
2. detention in Civil prison or
3. by both

No limitation is prescribed U/Art. 136 of Limitation Act.
Issue attachment – the attachment can be from 3 months to one year – D.hr. has to apply for sale- Sale process must be paid towards compensation.

J.Dr. can be sent to civil prison.

Whether the Civil Court can grant Police Aid for execution of decree in a Suit of Permanent Injunction – No

Please Refer:

Galikota Reddy Vs Gali Rajagopla Reddy (2000 (6) ALD 449)

Palavarapu Nagamani and others Vs Paruchuri Koteswara Rao and other (2010 (2) ALD 41 (DB)

D.Tulijadevi and other Vs Margam Sankar and another (2010 (2) ALD 732

Maximum period of civil imprisonment must not be more than 3 months (though no period is fixed under Order 21 Rule 32)
Refer

Dodda Narayana Vs. Velti Reddemme (AIR 1990 A.P. 147)

If J.Dr. is a corporation, then the decree can be executed by attachment and sale of the properties of the corporation. Further with the leave of the Court, the Directors and other principal officers can be detained in the civil prison.

7) Execution of the Decree for Mandatory Injunction.

8) Execution of Decree for specific performance of Agreement of sale and endorsement.

In execution of decree for specific performance of agreement of sale, whether I.A. is to be filed in the same suit u/Sec.28(3) of Specific Relief Act, 1963 ?

Or

An Execution petition to be filed u/O.21 Rule 34 CPC
Execution Application is to be filed.
Please refer

Cherukuri Venkat Rao Vs. Brahmajoshula Bala Gangadhara Sarma & others (1987 (2) ALT 229)

Raman Kutti Guptan Vs. Joseph {AIR 1997 Ker.301}

Balasa Sarada Vs. Talluri Anasuyamma (died) & others (2007 (2) ALD 802)

Pratibha Sinh & another Vs. Shanti Devi Prasad & another (AIR 2003 SC 643)

In the plaint the possession was not pleaded, no relief was granted. <u>Whether the possession can be granted by the executing court</u> – Yes

Suluguri Vijaya and others Vs Pamuleti Manjula (2007 (3) ALD 657)

O.21 Rule 34

Rule 219, 220 of C.R.P & Forms 54 & 55 of C.R.P.

Whether the documents executed by the court is compulsorily attestable –

No – Sait General –Vs- Pachigolla China Ramaswamy (AIR 1960 A.P. 465)

The sale deed executed by the Court must be presented before the Registrar for registration. Registration fee will be collected on the value of the property on the date of the presentation of the document.

Rule 221 (endorsement on negotiable instruments)

Decree for cancellation of the document:

Rule 149 of Civil Rules of Practice

<u>9) Execution of decree for restitution of conjugal rights:</u>

O.21 Rules 32 & 33 (The J.Dr. cannot be detained in civil prison)

<u>10) Execution of Decree under Rent Control Act:</u>

Sec.15 of A.P.Rent Control Act

Rule 23 Limitation 6 months

Delay petition 23 proviso

No notice is necessary to J.Dr.

If against L.R. – notice is mandatory

Enquiry on resistance Rule 23(7)

Break open - Rule 23(6)

Execution of the orders under Sec.14(6), 21, 22 of Rent Control Act

- By attachment & sale or by arrest.

XV. Whether Sec.5 of the Limitation Act is applicable to the proceedings under Order 21 CPC?

As per Sec.5 of the Limitation Act, the provision is not applicable to proceedings u/O.21 CPC.

- But there is an amendment in the year 1992 adding sub Rule 4 to Rule 106 of O.21 C.P.C. In view of the same, Sec.5 of Limitation Act is applicable to orders under O.21 Rule 105 C.P.C. and for the petitions filed u/O.21 Rule 58 C.P.C. also.

Please refer –

Sale Rangaswamy Vs. Spl.Collector-cum-Land Acquisition Officer SSP, Kurnool {2004 (3) ALD83}

State Bank of India Vs. Muffar Ali Khan & others {2004 (6) ALT 17}

Please also refer –

Damodaran Pillai Vs. South India Bank Limited (AIR 2005 SC 3460)

Thatipalli Vajramma Vs. Revuri Devayya & others {2008(1) ALT 442}

Habiba Babu -Vs- B. Choudesh (2009 (1) APLJ 369)

The Law is finally settled by full bench of our Hon'ble High Court in

Ch.Krishnaiah Vs Ch. Prasada Rao (2009 (6) ALT 82 FB)

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EXECUTION PROCEEDINGS – LIMITATION PRESCRIBED UNDER THE LIMITATION ACT 1963

Art No.	Description of application	Period of limitation	Time from which period begins to run
1	2	3	4
124	For a review of judgment by a Court other than the Supreme Court.	Thirty days	The date of the decree or roder.
125	To record an adjustment or satisfaction of a decree.	Thirty days	When the payment or adjustment is made.
126	For the payment of the amount of a decree by installments.	Thirty days	The date of the decree.
127	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Sixty days	The date of the sale.
128	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days	The date of the dispossession.
129	For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.
134	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.
135	Mandatory Injunction	Three years	The date of the decree or where a date is fixed for performance, sch date.
136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court.	Twelve years	(When) the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place. Provided that an application for the endorcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
137	Any other application for which no period of limitation is provided elsewhere int his division.	Three years	When the right to apply accrues

COMPREHNESIVE STUDY ON RELEVANT PROVISIONS ON EXECUTION

Order 21 of the Code of Civil Procedure deals with the solemn act of execution of the decrees passed by the Courts from grassroots to the top. Ultimately, after the judgment attains finality or where there is no stay in the execution by any Appellate or Revisional Court, it is the Court of original jurisdiction which performs this sacred act of implementation of the execution. It has been often seen that in view of less number of units prescribed for execution of the decree, the executions are not give that much time and importance as required and desired. It is only the execution, which reveals and signifies the importance of the decrees to be passed and the pedestal of the Court and sanctity of the document. As such, the decrees are required to be executed with force, so that the Decree Holder having a document containing declaration of his rights may not feel cheated or helpless having earned no fruits of the lis got settled by him from the Court even after spending decades altogether.

This Order can be divided into six parts. If the Courts deal the executions while considering the applications/objections topic wise, it would be easy for them to adjudicate the matter easily. The main classification is as under:-

(1) Applications for execution and the process to be applied.
(2) Stay of executions.
(3) Mode of executions.
(4) Sale of immovable property and movable property.
(5) Adjudication of the claims and objections.
(6) Resistance and delivery of possession.

Order 21 Rule 1 CPC : **Method of adjustment in money decree -**

Order 21 Rule 1 of the CPC provides for the modes of paying the money decree. First of all, the Court should appropriate the amount towards interest, then towards the costs and thereafter, towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment debtor while making the deposit and intimating the decree holder of his intention. This Order also provides mode for executing the decrees and implementation of even decrees of specific performance, permanent injunction, restitution of conjugal rights and possession etc.

The Hon'ble Supreme Court in case ***Gurpreet Singh Vs. Union of India,*** 2008 (2) RCR (Civil) 207, has observed as under:-

> 26. Thus, in cases of execution of money decrees or award decrees, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree. But the fact remains that to the extent of the deposit, no further interest is payable thereon to the decree holder and there is no question of

the decree holder claiming a re-appropriation when it is found that more amounts are due to him and the same is also deposited by the judgment debtor. In other words, the scheme does not contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal.

27. As an illustration, we can take the following situation. Suppose, a decree is passed for a sum of Rs.5,000/- by the trial court along with interest and costs and the judgment debtor deposits the same and gives notice to the decree holder either by approaching the executing court under Order XXI Rule 2 of the Code or by making the deposit in the execution taken out by the decree-holder under Order XXI Rule 1 of the Code. The decree holder is not satisfied with the decree of the trial court. He goes up in appeal and the appellate court enhances the decree amount to Rs.10,000/- with interest and costs. The rule in terms of Order XXI Rule 1, as it now stands, in the background of Order XXIV would clearly be, that the further obligation of the judgment debtor is only to deposit the additional amount of Rs. 5,000/- decreed by the appellate court with interest thereon from the date the interest is held due and the costs of the appeal. The decree holder would not be entitled to say that he can get further interest even on the sum of Rs.5,000/- decreed by the trial court and deposited by the judgment debtor even before the enhancement of the amount by the appellate court or that he can re-open the transaction and make a re-appropriation of interest first on Rs.10,000/-, costs and then the principal and claim interest on the whole of the balance sum again. Certainly, at both stages, if there is short-fall in deposit, the decree holder may be entitled to apply the deposit first towards interest, then towards costs and the balance towards the principal. But that is different from saying that in spite of his deposit of the amounts decreed by the trial court, the judgment debtor would still be liable for interest on the whole of the principal amount in case the appellate court enhances the same and awards interest on the enhanced amount. This position regarding execution of money decrees has now become clear in the light of the amendments to Order XXI Rule 1 by Act 104 of 1976. The argument that what is awarded by the appellate court is the amount that should have been awarded by the trial court and so looked at, until the entire principal is paid, the decree holder would be entitled to interest on the amount awarded by the appellate court and therefore he can seek to make a re-appropriation by first crediting the amount deposited by the judgment debtor pursuant to the decree of the trial court towards the cost in both the courts, towards the interest due on the entire amount and only thereafter towards the principal, is not justified on the scheme of Order XXI Rule 1 understood in the context of Order XXIV Rules 1 to 4 of the Code. The principle appears to be that if a part of the principal has been paid along with interest due thereon, as on the date of issuance of notice of deposit,

interest on that part of the principal sum will cease to run thereafter. In other words, there is no obligation on the judgment debtor to pay interest on that part of the principal which he has already paid or deposited."

Order 21 Rule 42 CPC : Attachment before judgment in execution:-

Order 21 Rule 42 CPC deals with the attachment before the Court holds an inquiry as to rent or *mesne* profits or any other matter, the property of the judgment debtor could be attached, before the amount due is escertained in the terms of Order 38 Rule 5 CPC.

Order 21 Rule 29 CPC: **whether the decree of other Court could be stayed-**

The scope of applicability of Order 21 Rule 29 CPC;- Rule 29 refers to cases where the execution of the decree held by the Decree Holder could be stayed. For the applicability of Order 21 Rule 29 CPC, two conditions are to be fulfilled; (1) a proceeding in execution of the decree of that Court started at the instance of the decree holder against the judgment-debtor and (2) a suit at the instance of the same judgment-debtor against the holder of the decree of that Court.

Transferee Court has no power to stay the execution of the decree pending in its Court because the decree is not passed by that Court. Subsequent sale in spite of stay order held valid.

While elaborating Order 21 Rule 29 of the Civil Procedure code, the Hon'ble Supreme Court in ***Shaukat Hussain @ Ali Akram and others Vs. Smt. Bhuneshwari Devi (dead) by L.Rs. & others,*** 1973 AIR (SC) 528, has observed as under:-

> 4. Mr. Chagla appearing on behalf of the appellants prefaced his arguments by stating that the property attached in execution was a very valuable property worth more than Rs. 20,000/- and had been sold for a paltry sum due under the decree and this circumstance itself was sufficient to show that the sale was liable to be set aside. That contention is clearly not open on the materials on record. A judgment- debtor can ask for setting aside a sale in execution of a decree under section 47 C.P.C. and, in special circumstances which attract the provisions of Order XXI rule 90 he may also apply to the court to set aside the sale on the ground of material irregularity or fraud in publishing or conducting the sale provided he further proves to the satisfaction of the court that he has sustained substantial injury by reason of the irregularity or fraud. The application made to the executing court in the present case by the judgment-debtors was not one under Order XXI rule 90 C.P.C. That is conceded by Mr. 16- L172Sup.CI/72 1026 Chagla. Had it been the case that on account of fraud or material irregularity in conducting the sale, the sale required to be set aside, evidence would have been led on the point and there would have been a clear finding as to the substantial injury. The judgments of all the three courts proceed entirely on the basis that the

application was one under section 47 C.P.C. and not under Order XXI Rule 90 C.P.C. They do not deal with the question of- material irregularity or fraud in the conduct of the sale, nor do they deal with the injury caused to the judgment-debtors. The only question which was agitated before the courts was whether the sale was illegal in view of the fact that the execution proceedings had taken place during the existence of a stay issued by a competent court. It was also common ground that the stay issued by the Munsif was an Order passed under Order XXI Rule 29 C.P.C. The first two courts held that the stay was in existence when the execution proceedings ended in the sale while the High Court held that factually it was so because the sale took place on 6-8-1963, the stay, if any, having ceased to operate after 5-8-1963. The High Court further pointed out that the stay under Order XXI Rule 29 issued by the court of the Munsif Gaya was null and void as it was passed by a court without competence and, therefore, in law there was no legal stay of execution and the sale which took place in due course after attachment and proclamation of sale, was a valid one.

The scope of Rules 26 to 29 of Order 21 CPC:-

"6. Order 21, Civil Procedure Code deals generally with the execution of decree and orders. That order is divided into several topics, each topic containing a number of rules. The first four topics cover rules 1 to 25 and the fifth topic, namely, stay of execution comprises 4 rules, namely, Rules 26 to 29. A perusal of these rules will show that the first three rules i.e. Rules 26 to 28 deal with the powers and duties of a Court to which a decree has been sent for execution. Under Rule 26, that Court can stay the execution of the decree transferred to it for execution for a reasonable time to enable the judgment-debtor to apply to the Court by which the decree was passed or to any Court having appellate jurisdiction over the former for an order to stay execution or for any other order relating to the decree or execution which might have been made by the Court of first instance or the appellate Court. It will be seen, therefore, that under Rule 26 the transferee Court has a limited power to stay execution before it. Moreover, under sub rule (2) if any property is seized by it in the course of execution, it may even order the restitution of the property pending the result of the application made by the judgment-debtor to the Court of the first instance or to the appellate Court. Rule 27 says that any such restitution made under sub-rule (2) of Rule 26 will not prevent the property of the judgment-debtor from being retaken in execution of the decree sent for execution. Rule 28 provides that any order of the Court by which the decree was passed, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution. And then we have Rule 29 which deals with a different situation. The rule is as follows:

"Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed the Court may, on such terms as to security or otherwise, as it thinks fit stay execution of the decree until the pending suit has been decided."

It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one Court. One is the proceeding in execution at the instance of the decree-holder against the judgment- debtor and the other a suit at the instance of the judgment-debtor against the decree holder. That is a condition under which the Court in which the suit is pending may stay the execution before it, if that was the only condition, Mr. Chagla would be right in his contention, because admittedly there was a proceeding in execution by the decree-holder against the judgment-debtor in the Court of Munsif 1st Gaya and there was also a suit at the instance of the judgment-debtor against the decree- holder in that Court. But there is a snag in that rule. It is not enough that there is a suit pending by the judgment-debtor, it is further necessary that the suit must be against the holder of a decree of such Court. The words "such Court" are important "Such Court" means in the context of that rule the Court in which the suit is pending. In other words, the suit must be one not only pending in that Court but also one against the holder of a decree of that Court. That appears to be the plain meaning of the rule."

Order 21 Rule 35 (3) and Rule 97 CPC

These two Rule provides a right to the Decree Holder to complain against a person, who creates resistance in the execution of the decree.

Order 21 Rule 41 CPC- Arrest and detention:-

In case of money decree, as per Order 21 Rule 41 CPC, where the decree cannot be executed otherwise by way of attachment or sale of the property, the Court could make an order for the attendance and examination of such Judgment Debtor, or officer or any other person and for the production of any books or documents. If the decree remained unsatisfied for 30 days or otherwise the Judgment Debtor disobeys the decree, the Court may direct the person disobeying the order to be detained in the civil prison for a term not exceeding three months.

Section 47 of CPC

All the questions relating to execution, discharge and satisfaction of the decree are to be decided by the Executing Court and even the decision of the complicated questions is also not prohibited.

Section 47 of the Civil Procedure Code provides for disposal of all the questions arising between the parties to the suit, in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of

the decree, shall be determined by the Court executing the decree and not by a separate suit. Even the Code bars the powers to decide as the person raising objection is a Judgment Debtor or his representative and such question would also relate to execution, discharge or satisfaction of a decree.

In case ***Jugalkishore Saraf Vs. M/s Raw Cotton Co. Ltd.,*** 1955 AIR (SC) 376, the Hon'ble Apex Court has observed as under:-

> "There could be no -objection to decide questions involving investigation of complicated facts or difficult questions of law in execution proceedings, as section 47 of the Code of Civil Procedure authorises the Court executing the decree to decide all questions arising therein and relating to execution of the decree and subs-s- (2) further authorises the executing Court to treat a proceeding under the section as a suit thus obviating the necessity of filing a separate suit for the determination of the same. The line of decisions of the High Court of Bombay beginning with 11 Bom 506 and ending with AIR 1946 Bom 272 importing the equitable principle above enunciated therefore appears to me to be more in consonance with law and equity than the strict and narrow 'interpretation put on the words "where a decree..... is transferred by assignment in writing" by the High Courts of Madras and Calcutta in the decisions above noted."

Order 21 Rule 16 CPC:-

The assignment and transfer of the decree made, when assignment is complete. It was observed by the Hon'ble Supreme Court in ***Jugalkishore's*** case (supra), as under:-

> "54. Is there any warrant for importing this equitable principle while construing the statutory 'Provision enacted in Order 21, rule 16 of the Code of Civil Procedure? The Code of Civil Procedure does not prescribe any mode in which an assignment in writing has got to be executed in order to effectuate a transfer of a decree. The only other statutory provision in regard to assignments in writing is to be found in Chapter VIII of the Transfer of Property Act which relates to transfers of actionable claims and an actionable claim has been defined in section 3 of the Act as
>
> "a claim to any debt..... or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief....."
>
> A judgment debt or decree is not an actionable claim for no action is necessary to realise it. It has already been the subject of an action and is secured by the decree. A decree to be passed in future also does not come as such within the definition of an actionable claim and an assignment or transfer thereof need not be effected in the manner prescribed by section 130 of the Transfer of Property Act. If therefore the assignment or transfer

of a decree to be passed in the future does not require to be effectuated in the manner prescribed in the statute there would be no objection to the 1415 operation of the equitable principle above enunciated and the contract to assign evidenced by the assignment in writing becoming a complete equitable assignment of the decree when passed.

The assignment in writing of the decree to be passed would thus result in a contract to assign which contract to assign would become a complete equitable assignment on the decree being Passed and would fulfill the requirements of Order XXI, rule 16 in so far as the assignment or the transfer of -the decree would in that event be effectuated by an assignment in writing which became a complete equitable assignment of the decree when passed. There is nothing in the provisions of the Civil Procedure Code or any other law which prevents the operation of this equitable principle and in working out the rights and liabilities of the transferee of a decree on the one hand and the decree-holder and the judgment debtor on the other, there is no warrant for reading the words "where a decree..... is transferred by assignment in writing" in the strict and narrow sense,, in which they have been read by the High Court of Madras in 17 Mad LJ 391 and the High Court of Calcutta in AIR 1924 Cal 661 and AIR 1932 Cal 439.

It is significant to observe that the High Court of Calcutta in AIR 1939 Cal 715 applied this equitable principle and held that the plaintiff in whose favour the defendant had executed a mortgage bond assigning by way of security the decree that would be passed in a suit instituted by him against a third party for recovery of money due on unpaid bills for work done was entitled to a declaration that he was the assignee of the decree passed in favour of the defendants and was as such entitled to realise the decretal debt either amicably or by execution. If the plaintiff was thus declared to be the assignee of the decree subsequently passed in favour of the defendant and entitled to realise the decretal amount by execution could apply for execution of the decree and avail himself of the provisions of Order 21, Rule 16 as the assignee of the decree -which was passed subsequent to the date of the assignment in writing in his favour."

Order 21 Rule 99 CPC

Rule 99 of Order 21 provides an objector, other than the Judgment Debtor, to raise objection claiming any right in the property from which he is directed to be dispossessed. Rule 99 of Order 21 reads as under:-

"99. Dispossession by decree holder or purchaser

(1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.

(2) Where any such application is made, the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

The other question to be noticed is that normally the Courts frame the issues while deciding the lis between the parties, but the law does not provide that in each case, the issues are required to be framed. Where the objections raised by the third party are superfluous, then the Court can refuse to entertain the same and such objections could summarily be tried. Where objections have some merits, then the Court could decide those objections after seeking reply and evidence of the parties.

Rules 105 and 106 of Order 21 CPC, govern the procedure for adjudication of the objection:-

These Rules read as under:-

"105. Hearing of application

(1) The court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the court may make an Order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the court does not appear, the court may hear the application ex parte and pass such Order as it thinks fit.

Explanation : An application referred to in sub-rule (1) includes a claim or objection made under rule 58.

106. Setting aside orders passed ex parte, etc.

(1) The applicant, against whom an Order is made under sub-rule (2) of rule 105 or the opposite party against whom an Order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the court to set aside the order, and if he satisfies the court that there was sufficient cause for his non-appearance when the application was called on for hearing, the court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No Order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order."

Restoration of the objections:-

Rule 106 of this Order indicates that if the objector fails to appear, then the application could be dismissed and on showing the sufficient cause, the Court could restore the said objection petition and decide the same on merits.

Order 21 Rule 92 (2):- The conditions when the sale could be set aside after auction-

Order 21 Rule 92 (2) provides that if the deposit is made within 30 days from the date of sale and an application is filed, then the Court would have no discretion but to set aside the sale and if the amount is not deposited within 30 days, but within 60 days, then it will be within the discretion of the Court, whether or not to grant the application. However, the application could be filed within 60 days. Rule 92 (2) of Order 21 CPC reads as under:-

> "(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within sixty days from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the court, the court shall make an Order setting aside the sale: PROVIDED that no Order shall be made unless notice of the application has been given to all persons affected thereby:"

Order 21 Rule 89 CPC

Primary condition precedent to set aside the sale of a mortgaged property is to pay the mortgage money in addition to depositing of 5 percent of the purchase money in the Court.

While elaborating Rule 89 of Order 21 CPC, the Hon'ble Supreme Court in case ***Tribhovandas Purshottamdas Thakkar Vs. Ratilal Motilal Patel and others,*** 1968 AIR (SC) 372, has held as under:-

> 5. It was urged, however, that the mortgagee having agreed to, abandon the execution proceeding and to wait for six months for receiving payment of the mortgage dues from the trustees, abandonment of the execution proceeding was in law equivalent to, payment to the decree-holder of the amount specified in the proclamation of sale for the recovery of which the sale was ordered. This in our Judgment is a futile argument. By abandoning the execution proceeding the claim of the creditor is not extinguished: he is entitled to commence fresh proceedings for sale of the property. Rule 89 of Order 21 is intended to confer a right upon the judgment-debtor, even after the property is sold, to satisfy the claim of the decree-holder and to compensate the auction purchaser by paying him 5% of the purchase-money. The provision, is not intended to defeat the claim of the auction purchaser, unless the decree is simultaneously satisfied. When the judgment creditor agrees to extend the

time for payment of the amount for a specified period and in the meanwhile agrees to receive interest accruing due on the amount of the decree, the condition requiring the judgment debtor to deposit in Court for payment to the decree holder the amount specified in the proclamation of sale for the recovery of which the sale was ordered. cannot be deemed to be complied with.

6. Our attention was invited to several decisions in which it was held, that if the judgment-debtor instead of depositing in Court the amount specified in the proclamation of sale for recovery of which the property is sold, satisfies the claim of the decree-holder under the decree, the requirements of Order 21 Rule 89 are complied with: **Subbayya v. Venkata Subba Reddi, AIR 1935 Mad 1050; Muthuvenkatapathy Reddy v. Kuppu Reddi, AIR 1940 Mad 427; ILR (1940) Mad 699 (FB); Laxmansing Baliramsing v. Laxminarayan Deosthan Kapshi, ILR (1947) Nag 802; Rabindra Nath V. Harendra Kumar, AIR 1956 Cal 462; M.H.Shivaji Rao V. Niranjanaiah, AIR 1962 Mys 36.** These cases proceed upon interpretation of the expression 'less any amount which may since the date of such proclamation of sale, have been received" occurring in clause (b) of Rule 89. It is unnecessary to venture an opinion whether these cases were correctly decided. It is sufficient to observe that an order setting aside a court sale, in execution of a mortgage decree cannot be obtained, under Order 21 Rule 89 of the Code of Civil Procedure by merely depositing 5 % of the purchase- money for payment to the auction purchaser and persuading the decree- holder to abandon the execution proceedings."

The essentials for setting aside the sale have also been elaborately discussed by the Hob'ble Apex Court in case ***Dadi Jagannadham Vs. Jammulu Ramulu,*** 2001(4) RCR (Civil) 267, wherein it has been held as under:-

"18. Having given our careful consideration to the question, we are of the opinion that there is no anomaly and that there are no different periods of limitation for making deposits and/or filing an application for setting aside the sale. It is by virtue of Order 21 Rule 89 CPC that an application for setting aside a sale and a deposit can be made. Order 21 Rule 89 CPC does not prescribe any period within which the application is to be made or deposit is to be made. All that Order 21 Rule 92 (2) provides is that if the deposit is made within 30 days from the date of sale and an application is filed then the Court would have no discretion but to set aside the sale. That does not mean that if the deposit is made after 30 days the Court could not entertain the application. If the deposit is made beyond the period of 30 days, but within the period 60 days, then it will be within the discretion of the Court whether or not to grant the application. Thus an application can be made within the period prescribed under Article 127, Limitation Act. As an application can be made within 60 days and, as stated above, no period for making a deposit is

prescribed under Order 21 Rule 91 (2) the deposit can also be made within 60 days. In our view, therefore, the view expressed in P.K. Unni's case that Order 21 Rule 92(2) CPC prescribes a period of limitation for making a deposit is not correct."

Other conditions where sale could be set aside

Order 21 Rule 90 CPC - deals with the situations when the sale could be set aside:-

Mere to establish irregularity or fraud is not sufficient to set aside the sale. The applicant must establish that material irregularity or fraud has resulted in substantial injury to the applicant. There is no specific provision under Order 21 Rule 67 CPC that sale must be advertised in the local newspaper. Therefore, irregularity cannot be given weight in the absence of any such order made by the Court.

The Hon'ble Apex Court in case ***Saheb Khan Vs. Mohd. Yusufuddin and others,*** 2006 AIC (SC) 1871, has further observed as under:-

"13. Therefore, before the sale can be set aside merely establishing a material irregularity or fraud will not do. The applicant must go further and establish to the satisfaction of the Court that the material irregularity or fraud has resulted in substantial injury to the applicant. Conversely even if the applicant has suffered substantial injury by reason of the sale, this would not be sufficient to set the sale aside unless substantial injury has been occasioned by a material irregularity or fraud in publishing or conducting the sale.

14. A charge of fraud or material irregularity under Order 21 Rule 90 must be specifically made with sufficient particulars. Bald allegations would not do. The facts must be established which could reasonably sustain such a charge. In the case before us, no such particulars have been given by the respondent of the alleged collusion between the other respondents and the auction purchaser. There is also no material irregularity in publishing or conducting the sale. There was sufficient compliance with the orders of Order 21 Rule 67(1) read with Order 21 Rule 54(2). No doubt, the Trial Court has said that the sale should be given wide publicity but that does not necessarily mean by publication in the newspapers. The provisions of Order 21 Rule 67 clearly provide if the sale is to be advertised in the local newspaper, there must be specific direction of Court to that effect. In the absence of such direction, the proclamation of sale has to be made under Order 21 Rule 67(1) "as nearly as may be in the manner prescribed by Rule 54, Sub- rule (2)." Rule 54 sub-rule (2) provides for the method of publication of notice and reads as follows:

"(2). The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then

upon a conspicuous part of the Court-house, and also where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situated (and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village)."

Order 21 Rule 58 CPC- Attachment of mortgaged property:-

Attachment before judgment- Suit under Order 21 Rule 58 CPC to release the property from attachment. If the property is under attachment in another money suit and the mortgagee is not in actual or constructive possession of the property on that date, then the objection by such objector under Order 21 Rule 58 CPC to such attachment is not maintainable.

While further elaborating Order 21 Rule 58 CPC, the Hon'ble Supreme Court in case ***Kabidi Venku Sah Vs. Sayed Abdul Hai and another,*** 1984 AIR (SC) 117, has observed as under:-

"7. The matter is quite simple but has unfortunately dragged on for nearly 15 years on account of a wrong and ill advised step taken by the appellant. The learned Principal Civil Judge erred in observing that what was attached before judgment on 24.09.1964 is not the equity of redemption alone but the entire property. He has rightly held that in the claim petition the question of the mortgage of 1948, the mortgage decree, the Court auction sale and delivery of possession of the property to the appellant pursuant to that sale cannot be contended to be collusive and observed that the first respondent could, if at all, challenge them only in a separate suit. That being so, undoubtedly the mortgage of 1948 in favour of the appellant was there and what remained with the mortgagor was only the equity of redemption until it was brought to an end by the sale in execution of the mortgage decree confirmed by the court on 28.08.1968. Therefore, there could be no doubt whatsoever that on 24.09.1964 when the property was attached before judgment long after the mortgage dated 31.07.1948 and two years, before the suit and the mortgage was filed in 1966, the mortgagor had the equity of redemption and that what could have been attached in law on 24.09.1964 was the equity of redemption alone and not the entire interest in the property. There should have been no difficulty for the learned Judge of the High Court holding that the appellant could not have been in possession of the property, actual or constructive, for he was only a simple mortgagee who had nothing to do with possession and he got delivery of the property through the court as a decree holder – court auction purchaser on 28.04.1968 as noticed by the learned Judge in his judgment. The appellant had no doubt an interest in the property as mortgagee, but he could not have been in possession of the property as he was only a simple mortgagee. The appellant was a secured creditor as he had a mortgage in his favour, and any attachment effected after the date of the mortgage and during its subsistence can be

only subject to that mortgage. He had no interest in the equity of redemption on the date of the attachment and could not therefore have had any objection to that right of the mortgagor being attached by the first respondent. Therefore, he was not a person who could in law file any claim petition under Order 21 Rule 58 objecting to the attachment of the equity of redemption. We may notice here what Order 21 Rule 58(1) says and it is this:

"Where any claims preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained."

8. The attaching creditor can bring the property to sale only subject to the mortgage so long as it is subsisting. That is to say he could bring only the mortgagor's equity of redemption to sale if it had not already been extinguished by its sale in execution of any decree obtained on that mortgage. But, if the equity of redemption has already been sold after the date of the attachment the attaching, decree holder could proceed only against the balance, if any, of the sale price left after satisfying the mortgagee decree-holder's claim under the decree. The mortgagee's right is thus not affected, at all. Therefore, it is we had observed earlier that the appellant had taken a wrong and ill advised step in coming forward with the claim petiton which has resulted in the matter dragging on for over 14 years from 15.01.1969. The appellant could not object to the attachment of the equity of redemption. The appeal fails and is dismissed, but under the circumstances of the case without costs."

<u>Order 21 Rule 35 (2) CPC</u>:- Attachment of share of coparcenary property and limitation to take possession of such property-

Decree against father and four sons. Execution against Joint Family property- Auction purchaser purchased at the auction sale was the share of four sons' with joint family property. Sons' original share was 4/5th reduced to 2/3rd on the date of auction sale, after the birth of another son- 1/6th share also allotted in partition suit to auction purchaser, but he was entitled only to four sons' share that is 2/3rd share in the property. Alienation by coparceners of undivided interest – Alienee is not entitled to possession of interest purchased by him till a partition has made that being so, it is arguable that the coparceners can never be in adverse possession of the properties as against him as possession can be adverse against a person only when he is entitled to possession.

In case ***M.V.S. Manikayala Rao Vs. M. Narasimhaswami and others,*** 1966 AIR (SC) 470, the Hon'ble Supreme Court has held as under:-

"5. As earlier stated the High Court held that Article 144 applied. The application of this article seems to us to present great difficulties to

some of which we like to refer. That article deals with a suit for possession of immovable property or any interest therein not otherwise specially provided for and prescribes a period of twelve years commencing from the date when the possession of the defendant becomes adverse to the plaintiff. This article obviously contemplates a suit for possession of property where the defendant might be in adverse possession of it as against the plaintiff. Now, it is well settled that the purchaser of a coparcener's undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased. His right to possession "would date from the period when a specific allotment was made in his favour": ***Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh, 1954 SCR 177 at P.188.*** It would, therefore, appear that Sivayya was not entitled to possession till a partition had been made. That being so, it is arguable that the defendants in the suit could never have been in adverse possession of the properties as against him as possession could be adverse against a person only when he was entitled to possession. Support for this view may be found in some of the observations in the Madras Full Bench case of ***Vyapuri v. Sonamma Boi Ammani, ILR 39 Mad 811.***

6. In the case in hand the learned Judges of the High Court thought that the applicability of Article 144 to a suit like thepresent one was supported by the decision of theJudicial Committee in ***Sudarsan Das v. Ram Kirpal Das, 77 Ind App 42.*** We feel considerable doubt that the case furnishes any assistance. It held that Article 144 extends the conception of adverse possession to include an interest in immovable property as well as the property itself. In that case, a purchaser of an undivided share in a property which was not coparcenary property, had obtained possession of that share and he was held to have acquired title to it by adverse possession. That was not a case of a person who was not entitled to possession. We are not now concerned with adverse possession of an interest in property.

<u>Order 21 Rule 35 (3) CPC</u> :- **Extent of force to be used to take possession**-

This Rule provides that even if the possession of some premises is not delivered, then the Court, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break any door or do any other act necessary for putting the Decree-Holder in possession.

<u>Order 21 Rule 17, Order 34 Rule 4, Rules 14 and 15</u>:- Recovery of maintenance by sale of the property over which charge was created-

Execution for maintenance after the charge has been created by the Court on many lots of the properties. Even if the purchase of one lot is found to be made by the decree-holder prior to the execution, then the recovery of maintenance could be effected from the other properties over which, the charge has been created.

In case ***Janapareddy Latchan Naidu Vs. Janapareddy Sanyasamma,*** 1963 AIR (SC) 1556, the Hon'ble Apex Court has observed as under:-

> "6. The argument involves a fallacy because it assumes that a charge created by a decree on a number of properties disappears when the charge-holder in execution of the charge decree purchases one lot of properties. An executory charge-decree for maintenance becomes executable again and again as future sums become due. The executability of the decree keeps the charge alive on the remaining properties originally charged till the future amount cease. In other words the charge subsists as long as the decree subsists. By the execution the charge is not transferred in its entirety to the properties purchased by the charge-holder. Nor is the charge divided between those properties and those which still remain with the judgment debtor. The whole of the charge continues over all the properties jointly and severally. Nor is any priority established between the properties purchased by the charge-holder and those that remain. It is not permissible to seek an analogy from the case of a mortgage. A charge is different from a mortgage. A mortgage is a transfer of an interest in property while a charge is merely a right to receive payment out of some specified property. The former is described a jus in rem and the latter as only a jus ad rem. In the case of a simple mortgage there is a personal liability express or implied but in the case of charge there is not such personal liability and the decree, if it seeks to charge the judgment debtor personally, has to do so in addition to the charge. This being the distinction it appears to us that the appellant's contention that the consequences of a mortgagee acquiring a share of the mortgagor in a portion of the mortgaged property obtain in the case of a charge is ill founded. The charge can be enforced against all the properties or severally."

MANU/SC/0212/1996

Equivalent/Neutral Citation: AIR1996SC780, 1995 (26) ALR 358, 1995 (3) CCC 132 , 1996(1)CTC271, JT1995(5)SC630, 1996-1-LW145, (1995)2MLJ107(SC), 19953RRR188, 1995(4)SCALE549, (1995)5SCC238, [1995]Supp1SCR535

IN THE SUPREME COURT OF INDIA

Special Leave Petn. (Civil) No. 10546 of 1995

Decided On: 12.05.1995

Appellants: **B. Gangadhar**
Vs.
Respondent: **B.G. Rajalingam**

Hon'ble Judges/Coram:
K. Ramaswamy and Saiyed Saghir Ahmad, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Subodh Markandeya and Chitra Markandaya, Advs

ORDER

1. This petition arises from the order of the Andhra Pradesh High Court dated 17.2.1995 made in C.R.P. No. 496/94.

2. The petitioner is the judgment-debtor. The respondent laid O.S. No. 375/1985 for declaration of title to and for possession of the property bearing No. 21-6-652 situated at Chelapura, Hyderabad. By decree dated January 25, 1991 the trial court declared him to the absolute owner of the suit property and also directed the petitioner "his men, tenants to vacate and hand over vacant possession of the land held by the petitioner". The decree had become final. When warrant was issued in execution for delivery of possession, the bailiff returned it on the ground that the petitioner had constructed shops and inducted tenants into possession and that, therefore, he cannot execute the warrant. Thereon, the respondent filed an application under Order 21, Rule 98 read with Section 151 CPC to issue warrant to the bailiff to demolish the shops constructed by the petitioner and deliver vacant possession of the suit house. The executing court, after enquiry, by its order dated September 30, 1993 directed bailiff by warrant to demolish the shops and to deliver vacant possession to the respondent. The petitioner carried the order in revision but was unsuccessful. Thus this Two principal contentions raised all through are that in the absence of mandatory injunction granted in the decree, the executing court is devoid of power and jurisdiction to direct demolition of the shops constructed by the petitioner. The second contention is that the tenants in possession being not economies parties to the decree, are not bound by the decree of the trial court and, therefore, the direction to dispossess them is illegal. The courts below have rightly rejected both the contentions.

Order 21 Rule 101 provides that :

> All questions (including questions relating to right, title or interest in the property)arising between the parties to a proceeding on an application under Rule 97 or Rule 90 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding and not by a separate suit and for this purpose, the Court

shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

2. The executing court, therefore, is mandated to decide all questions relating to right, title or interest in the property in the execution proceedings and not by way of a separate suit, notwithstanding anything contained contrary in any other law of the time being in force. Halsbury's Law of England, IVth Ed., Vol. 35 in paragraph 1214 at page 735, the word 'possession' is used in various contexts and phrases, for example, in the phrase 'actual possession' or 'to take possession' or 'interest in possession' or 'estate in possession' or 'entitled in possession'. In paragraph 1211 at page 732, legal possession has been stated that possession may mean that possession which is recognised and protected as such by law. Legal possession is ordinarily associated with de facto possession; but legal possession may exist without de facto possession, and de facto possession is not always regarded as possession in law. A person who, although having no de facto possession, is deemed to have possession in law is sometimes said to have constructive possession. In paragraph 1216 at p.736 it is stated that the right to have legal and de facto possession is a normal but not necessary incident of ownership. Such a right may exist with, or apart from, de facto or legal possession, and different persons at the same time in virtue of different proprietary rights.

3. In Black's Law Dictionary, VIth Ed., the ownership has been defined as "Collection of rights to use and enjoy property, including right to transmit it to others. Therefore, ownership is de jure recognition of a claim to certain property. Possession is the objective realisation of ownership. It is the de facto exercise of a claim to certain property and a de facto counterpart of ownership. Possession of a right is the de facto relation of continuing exercise and enjoyment as opposed to the de jure relation of ownership. Possession is the de facto exercise of a claim to certain property. It is the external form in which claims normally manifest themselves. Possession is in fact what ownership is in right enforceable at law to or over the thing. A man's property is that which is his own to do what he likes with it. Those things are a man's property which are the object of ownership on his part. Ownership chiefly imports the right of exclusive possession and enjoyment of the thing owned. The owner in possession of the thing has the right to exclude all others from the possession and enjoyment of it. If he is wrongfully deprived of what he owns, the owner has a right to recover possession of it from the person who wrongfully gets into possession of it. The right to maintain or recover possession of a thing as against all others is an essential part of ownership. Ownership implies not so much the physical relation between the person and the thing as the relation between the person owning and the thing owned. Ownership is pre-eminently a right. The right to ownership of a property carries with it the right to its enjoyment, right to its access and of other beneficial enjoyment incidental thereto. If any obstruction or hindrance is caused for its enjoyment or use, the owner, of necessity, has the remedy to have it removed. If any obstruction is raised by putting up a construction pendente lite or prevents the passage or right to access to the property pendente lite, the plaintiff has been given right and the decree-holder is empowered to have it removed in execution without tortuous remedy of separate suit seeking mandatory injunction or for possession so as to avoid delay in execution or frustration and thereby defeat the decree. The executing court, therefore, would be justified to order its removal of unlawful or illegal construction made pendente lite so that the decree for possession or eviction, as the case may be, effectually and completely executed and the delivery of possession is given to the decree holder expeditiously. Admittedly, pending suit the petitioner had constructed shops and inducted tenants in possession without permission of the court. The only course would be to decide the

dispute in the execution proceedings and not by a separate suit.

Order 21, Rule 35(3) envisages that :

> Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any women not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

4. Rule 35(3) of Order 21 C.P.C. itself manifests that when a decree for possession of immovable property was granted and delivery of possession was directed to be done, the court executing the decree is entitled to pass such incidental, ancillary or necessary orders for effective enforcement of the decree for possession. That power also includes the power to remove any obstruction or super-structure made pendente lite. The exercise of incidental, ancillary or inherent power is consequential to deliver possession of the property in execution of the decree. No doubt, the decree does not contain a mandatory injunction for demolition. But when the decree for possession had become final and the judgment-debtor or a person interested or claiming right through the judgment-debtor has taken law in his hands and made any constructions on the property pending suit, the decree-holder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the decree for possession. It is not necessary to file a separate suit when the construction was made pending suit without permission of the court. Otherwise, the decree becomes in executable driving the plaintiff again for another round of litigation which the code expressly prohibits such multiplicity of proceedings.

5. It is also not necessary that the tenant should be made party to the suit when the construction was made pending suit and the tenants were inducted into possession without leave of the court. It is settled law that a tenant who claims title, right or interest in the property through the judgment debtor or under the colour of interest through him, he is bound by the decree and that, therefore, the tenant need not eo nominee be '. impleaded as a party defendant to the suit nor it be an impediment to remove obstruction put up by them to deliver possession to the decree. What is relevant is only a warning by the bailiff to deliver peaceful possession and if they cause obstruction, the bailiff is entitled to remove the obstruction; cause the construction demolished and deliver vacant possession to the decree holder in terms of the decree. Thus considered, we hold that the High Court and the executing court have not committed any error of law in directing demolition of shops and delivery of the possession to the decree holder.

6. The S.L.P. is accordingly dismissed.

MANU/SC/0333/2021

Equivalent/Neutral Citation: 2021(222)AIC228, AIR2021SC2161, 2021(3)ALD68, 2021 (147) ALR 738, 2021(4)ALT140, 2021(3)BLJ412, 2021 (2) CCC 210 , 2021(3)CivilCC(S.C.), (2021)4GLR3419, 2021(3)ICC569, 2021/INSC/270, 2021(2)J.L.J.R.459, 2021(5)JKJ283[SC], 2021(2)KCCR1409, 2021 (4) KHC 148, 2021(3)KLJ156, 2021(3)KLT235, 2021 (2) MWN 578, 2021(I)OLR1058, 2021(2)PLJR467, 2021(2)RCR(Civil)854, 2021 153 RD70, (2021)6SCC418, 2021 (3) SCJ 628, [2021]4SCR279

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 1659-1660 of 2021 (Arising out of Special Leave to Appeal Nos. 7965-7966/2020), Civil Appeal Nos. 1661-1662 of 2021 (Arising out of SLP (C) Nos. 11859-11860/2020) and Civil Appeal Nos. 1663-1664 of 2021 (Arising out of SLP (C) Nos. 11792-11793/2020)

Decided On: 22.04.2021

Appellants: **Rahul S. Shah**
Vs.
Respondent: **Jinendra Kumar Gandhi and Ors.**

Hon'ble Judges/Coram:
S.A. Bobde, C.J.I., L. Nageswara Rao and S. Ravindra Bhat, JJ.

Counsels:
For Appearing Parties: Arunava Mukherjee, Shailesh Madiyal, AORs, Rakhi M., Paras Jain, Advs. and T. Harish Kumar, AOR

Case Note:
Civil - Execution of Decree - Delay in proceedings - Order XXI and Section 47 of the Code of Civil Procedure, 1908 - Identification of property in question raised as issue - Several proceedings post decree initiated - Execution pending since last over 14 years - All connected proceedings disposed vide impugned judgments containing directions - Whether impugned judgment liable to be set aside?

Facts:

In the present case, the vendor and her son (judgment debtors) after executing the sale deed in respect of a major portion of the property, questioned the transaction by a suit for declaration. The decree holders also filed a suit for possession. During the pendency of these proceedings, two sets of sale deeds were executed. The vendors' suit was dismissed and the decree of dismissal was upheld at the stage of the High Court too. On the other hand, the purchasers' suit was decreed and became the subject matter of the appeal. The High Court dismissed the first appeal and Apex Court dismissed the Special Leave Petition. This became the background for the next stage of the proceedings, i.e. execution. Execution proceedings now subsisting for over 14 years. In the meanwhile, numerous applications including criminal proceedings questioning the very same documents that was the subject matter of the suit were initiated. In between the portion of the property that had been acquired became the subject matter of land acquisition proceedings and disbursement of the compensation. That became the subject matter of writ and contempt proceedings. Various orders of the Executing Court passed from time to time, became the subject matter of writ petitions and appeals-

six of them, in the High Court. All these were dealt with together and disposed of by the common impugned order. The prime contention raised was with regard identification of the property and boundary etc. and the subjecting documents to forensic examination.

Held, while dismissing the Appeal:

High Court adopted a fair approach requiring the Executing Court to appoint a Court Commissioner to verify the identity of the suit properties and also consider the materials brought on record including the reports of the previous local commission. In the light of this, the arguments of the present Appellants unmerited and without any force. The documents ought to be subjected to forensic examinationinsubstantial. The criminal proceedings initiated during the pendency of the execution proceedings-in 2016 culminated in the quashing of those proceedings. The argument that the documents are not genuine or that they contain something suspicious ex-facie appears only to be another attempt to stall execution and seek undue advantage. As a result, the High Court correctly declined to order forensic examination. The direction to pay costs was just and proper.[20]

The High Court has directed the Executing Court to complete the process within six months. That direction is affirmed. [21]

To avoid controversies and multiple issues of a very vexed question emanating from the rights claimed by third parties, the Court must play an active role in deciding all such related issues to the subject matter during adjudication of the suit itself and ensure that a clear, unambiguous, and executable decree is passed in any suit.[35]

There is urgent need to reduce delays in the execution proceedings. As held appropriate, directions issued for compliance by Court to do complete justice. These directions are in exercise of our jurisdiction under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law. [41]

The appeals stand dismissed.[44]

ORDER

1. Leave granted.

2 . The present appeals arise out of the common judgment and order dated 16th January, 2020 of the Karnataka High Court which dismissed several Writ Petitions. The course of the litigation highlights the malaise of constant abuse of procedural provisions which defeats justice, i.e. frivolous attempts by unsuccessful litigants to putting up spurious objections and setting up third parties, to object, delay and obstruct the execution of a decree.

3 . The third Respondent (hereafter referred to as 'Narayanamma') had purchased a

property measuring 1 Acre (Survey No. 15/2) of Deevatige Ramanahalli, Mysore Road, Bengaluru (hereafter referred to as 'suit property') under the sale deed dated 17.03.1960. The suit land was converted and got merged in the municipal limits of Bengaluru and was assigned with Municipal Corporation No. 327 and 328, Mysore Road, Bengaluru. Narayanamma sold 1908 square yard of the suit property in Municipal Corporation (Survey No. 327) to 2nd and 3rd Respondents (hereafter referred to 'Jitendra' and 'Urmila') under a sale deed dated 13.05.1986. This was demarcated with the sketch annexed to the sale deed. The adjacent portion of property, Survey No. 327 was sold to Shri Moolendra Kumar Gandhi and Smt. Baby Gandhi by another sale deed dated 13.05.1986. This property was also demarcated in the sketch and clearly shows its dimensions and boundaries annexed to the sale deed. Therefore, the first two Respondents, Shri Moolendra Kumar Gandhi and Smt. Baby Gandhi became absolute owners of the suit property with the totally admeasuring of 3871 square yards. Thus, Narayanamma had sold about 34,839 square feet of the property out of 1 Acre land (43,860 square feet) owned by her. Subsequently, after the sale of the major portion of the said property to the first two Respondents and their brother, Narayanamma who is the mother of A. Ramachandra Reddy the fourth Respondent (hereafter called "the vendors") filed a suit[1] for declaration that the two sale deeds in favour of the first two Respondents (also called "purchasers" or "decree-holders") as well as against Shri Moolendra Kumar Gandhi etc. were void. The vendors and Shri Anjan Reddy (deceased Respondent No. 8) on 25.03.1991 executed a registered partition deed. This document did not advert to the sale deed executed in favour of the purchasers and Shri Moolendra Kumar Gandhi and Smt. Baby Kumari Gandhi. The purchasers were restrained by an injunction from entering the property which Narayanamma claimed was hers.

4. During the pendency of the suit for declaration, the first purchasers filed two suits[2] against the vendors for possession. During the pendency of these suits on 11.02.2000 by two separate sale deeds Shri Dhanji Bhai Patel and Shri Govind Dhanji Patel purchased 7489 square feet and 7650 square feet respectively, out of the residue of the property owned by Narayanamma. While so, during the pendency of the suits instituted by the purchasers, the vendors again sold the suit property i.e. the land to the present Appellant (Rahul Shah) and three others (Respondents No. 5-7) by four separate sale deeds.[3] In the possession suits the vendors filed counter claims (dated 18.04.1998). During the pendency of proceedings the purchasers sought for transfer and mutation of property in their names which were declined by the Municipal Corporation; this led to their approaching the High Court in Writ Petition No. 19205/1992 which was disposed of with a direction[4] that after adjudication of the injunction suit (filed by the vendors) the khata be transferred.

5. The proceedings in the injunction suit filed by the vendors and the other two suits filed by the purchasers were clubbed together. The City Civil Judge, Bangalore by a common judgment dated 21.12.2006 allowed and decreed the suits for possession preferred by the purchasers and dismissed the vendor's suit for injunction. The decree holders preferred execution proceedings.[5] They filed applications Under Order XXI Rule 97 of the Code of Civil Procedure (CPC) since the judgment debtors/vendors had sold the property to the Appellant and Respondents No. 4 to 7. The Appellant i.e. a subsequent purchaser filed objections.

6. During the pendency of the proceedings the front portion of the suit property bearing Municipal Corporation No. 327, Mysore road, Bangalore became the subject matter of the acquisition for the Bangalore Metro Project. The decree holders (the first two Respondents) preferred objections to the proposed acquisition and further claimed the

possession. In the meanwhile, aggrieved by the dismissal of the suit and decreeing the suit for possession, Narayanamma filed first appeals in the High Court[6]. In these proceedings it was brought to the notice of the High Court that the suit properties had been sold to the Appellant and Respondents No. 4 to 7. By an order[7] the High Court directed the vendors to furnish particulars with respect to the sale, names of the purchaser and area sold etc. By common judgment dated 22.10.2009 the High Court dismissed all the appeals pending before it. The Special Leave Petition preferred by the vendors[8] was also dismissed by this Court on 23.07.2010.

7. Apparently, during the pendency of execution proceedings before the trial Court the vendors again sold the properties in favour of Shri P. Prem Chand, Shir Parasmal, Shri Kethan S. Shah and Ors. and Shri Gopilal Ladha & Shri Vinay Maheshwari by separate sale deeds[9]. This was brought to the notice of the High Court which had dismissed the appeal preferred by the vendors.

8. During the pendency of the proceedings before the High Court Narayanamma, the Appellant and Respondents No. 4 to 7 filed indemnity bonds claiming that there was no dispute with respect to the suit property and claimed the compensation in respect of portions that were acquired. These were brought to the notice of the High Court which passed an order in W.P. No. 9337/2008. The court considered all the materials and held that the compensation could not have been dispersed to the vendors, the Appellant and Respondents No. 4 to 7. The High Court issued directions to them to deposit the amounts. An appeal was preferred by the Appellant and the said Respondents, against that order, which was rejected by the Division Bench.[10] Consequently, an enquiry was held and order was passed by the Land Acquisition Officer on 01.08.2011 directing the Appellant, the vendor and others to redeposit the amounts. By an order passed in another Writ Petition No. 2099/2011[11] the High Court held that the decree holder/purchasers were entitled to transfer of khata of property in their names and directed to hold an inquiry against the Revenue Officer. Since the orders of the High Court, with respect to the deposits of amounts, were not complied with, contempt proceedings were taken.

9. The High Court in another order dated 19.04.2013 directed Narayanamma and Respondents No. 4 to 7 to deposit the amounts. That order in contempt proceedings (C.C.C. No. 280/2011) was challenged before this Court in a special leave petition[12] which was dismissed on 05.11.2014. Thereafter, apparently in compliance with the High Court's direction for transfer of khata the municipal and revenue records reflect the names of the decree-holder/purchasers.

10. The execution proceedings initiated by the decree holders resulted in the court requiring parties to lead evidence, in view of the obstruction by the Appellant and Respondents No. 4 to 7, by its order dated 23.04.2010. When obstruction proceedings were pending Under Order XXI Rule 97, the judgment debtor i.e. the vendors initiated criminal proceedings in 2016 against the decree holders; these were stayed by the High Court on 20.06.2016 and later quashed on 16.03.2017. The judgment debtors had alleged forgery of certain documents. The High Court directed appointment of Court Commissioner to identify and measure the property. At the time of disposal of the criminal proceedings High Court directed that the Commissioner's report along with the objections of the judgment debtors ought to be forwarded to the Executing Court.

11. In the meanwhile, by an order the Executing Court had appointed the Taluka Surveyor of BBMP as the Court Commissioner and directed him to visit the spot and

survey and fix the boundaries of decretal property. Recall of these orders was sought by the judgment debtors; they also sought for reference to forensic examination by a Handwriting Expert of the sale documents. These two review applications were dismissed; and on 13.06.2017 the Executing Court declined the application for forensic examination of documents and also rejected the obstructers' resistance to execution.

12. All these orders led to initiation of five writ petitions on behalf of the Appellant, and the vendors etc. Three First appeals[13] were preferred by obstructers challenging the decision of the Executing Court dated 15.02.2017. By impugned common order all these Writ Petitions and appeals were dismissed.

13. It is argued by Mr. Shailesh Madiyal on behalf of the Appellant (Rahul Shah) that the impugned order has the effect of diluting the order of the Executing Court dated 23.04.2010 with respect to survey of the entire property. It was pointed out by the counsel for the Appellant that there were disputes with respect to boundaries and identity of the properties as between parties. Referring to the order, it was submitted that the Court had noticed that the High Court in earlier Writ Petitions had directed the Special Land Acquisition Officer to hold an enquiry and if necessary refer the matter to Civil Court Under Section 30 of the Land Acquisition Act. In view of all these disputes, questions especially related to the boundaries and the imprecise nature of the extent and location of the disputed properties, the impugned order should be interfered with and the reliefs sought by the Appellant be granted. Learned Counsel submitted that subsequently by order dated 31.10.2014 the Executing Court erroneously held that Sketch Exhibit P-26 was drawn by Revenue Authorities whereas in fact it was introduced by handwritten sketch given by the decree holders.

14. Learned Counsel submitted that decree holder's efforts in all the proceedings were to confuse the identity of the property and therefore had sought clubbing of both execution cases; this request was rejected by the Executing Court after concluding that the property sought to be executed in two cases were different and further that rights claimed too were distinct.

15. Learned Counsel for the Appellant in the second set of petitions, i.e. SLP (C) No. 11859-11860 of 2020 and SLP (C) No. 11792-11793 of 2020, on the other hand urged that the High Court as well as the Executing Court fell into error in holding that what was sought by the obstructer (i.e. the Appellant Gopilal Ladha) was far in excess of what was left after decree holders had purchased and therefore the conveyances had overlapped.

16. Mr. Arunava Mukherjee appearing for the second set of Appellants also reiterated the submissions of Mr. Shailesh Madiyal that the decree holders had intentionally confused the identity of the property. He highlighted that the High Court acted in error in rejecting the Appellants' request for subjecting documents to forensic examination by handwriting experts. It was submitted that this aspect was completely overlooked because the Appellants' had raised serious doubts with respect to the genuineness and authenticity of the signatures of the documents.

17. The Respondents urged that this Court should not interfere with the findings of the High Court. Learned Counsel reiterated that numerous proceedings were taken out and that the judgment debtors had sold the very same property three times over-at least two times after the decree holders purchased their portions of the property and during the pendency of the suits filed by them. The judgment debtors had sought a declaration that the sale deeds executed in favour of the decree holders were not genuine and lost.

Thereafter, the judgment debtor and some of the obstructers succeeded in collecting compensation in respect of the portion of the property that had been acquired. Ultimately, those amounts had to be disbursed by the Court orders. The judgment debtors/vendor even sought forensic examination and initiated the criminal proceedings that were quashed by the High Court. The High Court took note of all these circumstances and passed a just order, requiring the appointment of a Court Commissioner to identify and measure the properties. While doing so the Executing Court has been asked to take into consideration all the materials on record including the reports submitted by the previous Court Commissioner Mr. Venkatesh Dalwai.

Discussion and conclusions:

18. It is quite evident from the above discussion that the vendor and her son (judgment debtors) after executing the sale deed in respect of a major portion of the property, questioned the transaction by a suit for declaration. The decree holders also filed a suit for possession. During the pendency of these proceedings, two sets of sale deeds were executed. The vendors' suit was dismissed-the decree of dismissal was upheld at the stage of the High Court too. On the other hand, the purchasers' suit was decreed and became the subject matter of the appeal. The High Court dismissed the first appeal; this Court dismissed the Special Leave Petition. This became the background for the next stage of the proceedings, i.e. execution. Execution proceedings are now being subsisting for over 14 years. In the meanwhile, numerous applications including criminal proceedings questioning the very same documents that was the subject matter of the suit were initiated. In between the portion of the property that had been acquired became the subject matter of land acquisition proceedings and disbursement of the compensation. That became the subject matter of writ and contempt proceedings. Various orders of the Executing Court passed from time to time, became the subject matter of writ petitions and appeals-six of them, in the High Court. All these were dealt with together and disposed of by the common impugned order.

19. A perusal of the common impugned order shows that High Court has painstakingly catalogued all proceedings chronologically and their outcomes. The final directions in the impugned order is as follows:

> (a) the other challenge by the JDrs and the Obstructers having been partly favoured, the impugned orders of the Executing Court directing Delivery Warrant, are set at naught, and the matter is remitted back for consideration afresh by appointing an expert person/official as the Court Commissioner for accomplishing the identification & measurement of the decreetal properties with the participation of all the stake-holders, in that exercise subject to all they bearing the costs & fees thereof, equally;
>
> (b) it is open to the Executing Court to take into consideration the entire evidentiary material on record hitherto including the Report already submitted by the Court Commissioner Shri Venkatesh Dalwai,
>
> (c) the amount already in deposit and the one to be deposited by the Obstructers in terms of orders of Coordinate Benches of this Court mentioned in paragraph 8 supra shall be released to the parties concerned, that emerge victorious in the Execution Petitions;
>
> (d) the JDrs shall jointly pay to the DHrs collectively an exemplary cost of Rs. 5,00,000/- (Rupees five lakh) only

in each of the Execution Petitions within a period of eight weeks, regardless of the outcome of the said petitions; and, if, the same is not accordingly paid, they run the risk of being excluded from participation in the Execution Proceedings, in the discretion of the learned judge of the Court below; and,

(e) the entire exercise including the disposal of the Execution Petitions shall be accomplished within an outer

limit of six months, and the compliance of such accomplishment shall be reported to the Registrar General of this Court.

No costs qua obstructers.

Sd/-
JUDGE

20. The contentions of the Special Leave Petition mainly centre around one or the other previous orders of the Executing Court with regard identification of the property and boundary etc and the subjecting documents to forensic examination. As is evident from the reading of the final order, the High Court has adopted a fair approach requiring the Executing Court to appoint a Court Commissioner to verify the identity of the suit properties and also consider the materials brought on record including the reports of the previous local commission. In the light of this, the arguments of the present Appellants are unmerited and without any force. The Court also finds that the complaint that documents ought to be subjected to forensic examination, is again insubstantial. The criminal proceedings initiated during the pendency of the execution proceedings-in 2016 culminated in the quashing of those proceedings. The argument that the documents are not genuine or that they contain something suspicious ex-facie appears only to be another attempt to stall execution and seek undue advantage. As a result, the High Court correctly declined to order forensic examination. This Court is of the opinion that having regard to the totality of circumstances the direction to pay costs quantified at Rs. 5 lakh (to be complied by the judgment debtor) was reasonable, given the several attempts by the decree holder to ensure that the fruits of the judgment secured by them having been thwarted repeatedly. As a result, the direction to pay costs was just and proper.

21. The High Court has directed the Executing Court to complete the process within six months. That direction is affirmed. The parties are hereby directed to cooperate with the Executing Court; in case that court finds any obstruction or non-cooperation it shall proceed to use its powers, including the power to set down and proceed ex-parte any party or impose suitably heavy costs. Therefore, in light of the above observations these appeals are liable to be dismissed.

22. These appeals portray the troubles of the decree holder in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of decree. As on 31.12.2018, there were 11,80,275 execution petitions pending in the subordinate courts. As this Court was of the considered view that some remedial measures have to be taken to reduce the delay in disposal of execution petitions, we proposed certain suggestions which have been furnished to the learned Counsels of parties for response. We heard Mr. Shailesh Madiyal, learned Counsel for the Petitioner and Mr. Paras Jain, learned Counsel for the Respondent.

23. This Court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of

orders and execution of decrees. This was discussed even in the year 1872 by the Privy Counsel in The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing MANU/PR/0029/1872 : (1871-72) 14 Moore's I.A. 605 which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in Shub Karan Bubna @ Shub Karan Prasad Bubna v. Sita Saran Bubna MANU/SC/1607/2009 : (2009) 9 SCC 689, wherein it recommended that the Law Commission and the Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or the Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. The execution proceedings which are supposed to be handmaid of justice and sub-serve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.

24. In respect of execution of a decree, Section 47 of Code of Civil Procedure contemplates adjudication of limited nature of issues relating to execution i.e., discharge or satisfaction of the decree and is aligned with the consequential provisions of Order XXI. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, Executing Court must not go beyond the decree. However, there is steady rise of proceedings akin to a re-trial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the Executing Court and the decree holder is deprived of the fruits of the litigation and the judgment debtor, in abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the Courts first issue show cause notice asking the judgment debtor as to why the decree should not be executed as is given Under Order XXI Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment debtor sometimes misuses the provisions of Order XXI Rule 2 and Order XXI Rule 11 to set up an oral plea, which invariably leaves no option with the Court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.

27. This is anti-thesis to the scheme of Code of Civil Procedure, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order I and Order II which relate to Parties to Suits and Frame of Suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go.

28. Order I Rule 10(2) empowers the Court to add any party who ought to have been joined, whether as a Plaintiff or Defendant, or whose presence before the Court may be

necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. Further, Order XXII Rule 10 provides that in cases of assignment, creation or devolution of any interest during the pendency of the suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come to be devolved.

29. While Code of Civil Procedure Under Rules30 to 36 of Order XXI provides for execution of various decrees, the modes of execution are common for all. Section 51 of Code of Civil Procedure lists the methods of execution as by delivery of property; by attachment and sale; by arrest and detention in civil prison; by appointing a receiver or in any other manner as the nature of relief granted may require. Moreover, Order XL Rule 1 contemplates the appointment of the Receiver by the Court. In appropriate cases, the Receiver may be given possession, custody and/or management of the property immediately after the decree is passed. Such expression will assist in protection and preservation of the property. This procedure within the framework of Code of Civil Procedure can provide assistance to the Executing Court in delivery of the property in accordance with the decree.

30. As to the decree for the delivery of any immovable property, Order XXI Rule 35 provides that possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

31. As the trial continues between specific parties before the Courts and is based on available pleadings, sometimes vague description of properties raises genuine or frivolous third-party issues before delivery of possession during the execution. A person who is not party to the suit, at times claims separate rights or interests giving rise to the requirement of determination of new issues.

32. While there may be genuine claims over the subject matter property, the Code also recognises that there might be frivolous or instigated claims to deprive the decree holder from availing the benefits of the decree. Sub-rule (2) of Rule 98 of Order XXI contemplates such situations and provides for penal consequences for resistance or obstruction occasioned without any just cause by the judgment debtor or by some other person at his instigation or on his behalf, or by the transferee, where such transfer was made during the pendency of the suit or execution proceedings. However, such acts of abuse of process of law are seldom brought to justice by sending the judgment debtor, or any other person acting on his behalf, to the civil prison.

33. In relation to execution of a decree of possession of immovable property, it would be worthwhile to mention the twin objections which could be read. Whereas Under Order XXI Rule 97, a decree holder can approach the court pointing out about the obstruction and require the court to pass an order to deal with the obstructionist for executing a decree for delivering the possession of the property, the obstructionist can also similarly raise objections by raising new issues which take considerable time for determination.

34. However, Under Order XXI Rule 99 it is a slightly better position, wherein a person, other than the judgment debtor, when is dispossessed of immoveable property by the decree holder for possession of such property, files an application with objections. Such objections also lead to re-trial, but as the objector is already dispossessed, the execution of the decree is more probable and expeditious. In Order XXI Rule 97 the

obstructionist comes up with various objections that ideally should have been raised at the time of adjudication of suit. Such obstructions for execution could be avoided if a Court Commissioner is appointed at the proper time.

35. Having considered the abovementioned legal complexities, the large pendency of execution proceedings and the large number of instances of abuse of process of execution, we are of the opinion that to avoid controversies and multiple issues of a very vexed question emanating from the rights claimed by third parties, the Court must play an active role in deciding all such related issues to the subject matter during adjudication of the suit itself and ensure that a clear, unambiguous, and executable decree is passed in any suit.

36. Some of the measures in that regard would include that before settlement of issues, the Court must, in cases, involving delivery of or any rights relating to the property, exercise power Under Order XI Rule 14 by ordering production of documents upon oath, relating to declaration regarding existence of rights of any third party, interest in the suit property either created by them or in their knowledge. It will assist the court in deciding impleadment of third parties at an early stage of the suit so that any future controversy regarding non-joinder of necessary party may be avoided. It shall ultimately facilitate an early disposal of a suit involving any immovable property.

37. It also becomes necessary for the Trial Court to determine what is the status of the property and when the possession is not disputed, who and in what part of the suit property is in possession other than the Defendant. Thus, the Court may also take recourse to the following actions:

a) Issue commission Under Order XXVI Rule 9 of Code of Civil Procedure.

A determination through commission, upon the institution of a suit shall provide requisite assistance to the court to assess and evaluate to take necessary steps such as joining all affected parties as necessary parties to the suit. Before settlement of issues, the Court may appoint a Commissioner for the purpose of carrying out local investigation recording exact description and demarcation of the property including the nature and occupation of the property. In addition to this, the Court may also appoint a Receiver Under Order XL Rule 1 to secure the status of the property during the pendency of the suit or while passing a decree.

b) Issue public notice specifying the suit property and inviting claims, if any, that any person who is in possession of the suit property or claims possession of the suit property or has any right, title or interest in the said property specifically stating that if the objections are not raised at this stage, no party shall be allowed to raise any objection in respect of any claim he/she may have subsequently.

c) Affix such notice on the said property.

d) Issue such notice specifying suit number etc. and the Court in which it is pending including details of the suit property and have the same published on the official website of the Court.

38. Based on the report of the Commissioner or an application made in that regard, the Court may proceed to add necessary or proper parties Under Order I Rule 10. The Court may permit objectors or claimants upon joining as a party in exercise of power Under

Order I Rule 10, make a joinder order Under Order II Rule 3, permitting such parties to file a written statement along with documents and lists of witnesses and proceed with the suit.

39. If the above suggested recourse is taken and subsequently if an objection is received in respect of "suit property" Under Order XXI Rule 97 or Rule 99 of Code of Civil Procedure at the stage of execution of the decree, the Executing Court shall deal with it after taking into account the fact that no such objection or claim was received during the pendency of the suit, especially in view of the public notice issued during trial. Such claims Under Order XXI Rule 97 or Rule 99 must be dealt strictly and be considered/entertained rarely.

40. In Ghan Shyam Das Gupta v. Anant Kumar Sinha MANU/SC/0488/1991 : AIR 1991 SC 2251, this Court had observed that the provisions of the Code as regards execution are of superior judicial quality than what is generally available under the other statutes and the Judge, being entrusted exclusively with administration of justice, is expected to do better. With pragmatic approach and judicial interpretations, the Court must not allow the judgment debtor or any person instigated or raising frivolous claim to delay the execution of the decree. For example, in suits relating to money claim, the Court, may on the application of the Plaintiff or on its own motion using the inherent powers Under Section 151, under the circumstances, direct the Defendant to provide security before further progress of the suit. The consequences of non-compliance of any of these directions may be found in Order XVII Rule 3.

41. Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings we deem it appropriate to issue few directions to do complete justice. These directions are in exercise of our jurisdiction Under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.

42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

1. In suits relating to delivery of possession, the court must examine the parties to the suit Under Order X in relation to third

2. party interest and further exercise the power Under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

3. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

4. After examination of parties Under Order X or production of documents Under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

5. Under Order XL Rule 1 of Code of Civil Procedure, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for

proper adjudication of the matter.

6. The Court must, before passing the decree, pertaining to

7. delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

8. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.

9. In a suit for payment of money, before settlement of issues, the Defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers Under Section 151 Code of Civil Procedure, demand security to ensure satisfaction of any decree.

10. The Court exercising jurisdiction Under Section 47 or Under Order XXI of Code of Civil Procedure, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

11. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

12. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.

13. Under Section 60 of Code of Civil Procedure the term "...in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

14. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

15. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

16. The Judicial Academies must prepare manuals and ensure continuous

training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.

43. We further direct all the High Courts to reconsider and update all the Rules relating to Execution of Decrees, made under exercise of its powers Under Article 227 of the Constitution of India and Section 122 of Code of Civil Procedure, within one year of the date of this Order. The High Courts must ensure that the Rules are in consonance with Code of Civil Procedure and the above directions, with an endeavour to expedite the process of execution with the use of Information Technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.

44. The appeals stand dismissed.

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[1]O.S. No. 986/1987
[2]O.S. Nos. 9077/1996 and 9078/1996
[3]Dated 09.11.2001, 12.12.2001, 05.12.2002 and 20.10.2004
[4]Dated 05.11.1998
[5]Execution Case Nos. 458-459/2007
[6]R.F.A. No. 661-663/2007
[7]Dated 10.04.208
[8]S.L.P. (C) Nos. 16349-13651/2010
[9]Dated 09.11.2001, 12.12.2001, 05.12.2002 and 20.10.2004
[10]Dated 28.10.2009
[11]Dated 17.07.2013
[12]SLP (C) No. 18031/2013
[13]R.F.A. Nos. 441, 468 and 469/2017

(2013) 5 Supreme Court Cases 397

(BEFORE T.S. THAKUR AND M.Y. EQBAL, JJ.)

THOMSON PRESS (INDIA) LIMITED .. Appellant;

Versus

NANAK BUILDERS AND INVESTORS PRIVATE LIMITED AND OTHERS .. Respondents.

Civil Appeal No. 1518 of 2013†, decided on February 21, 2013

A. **Specific Relief Act, 1963 — S. 19 — Transferee/Purchaser pendente lite, held, may be impleaded in pending suit for specific performance of prior agreement to sell/contract for sale (CFS) filed by buyer under said CFS against original owner/transferor/seller pendente lite — Discretion of court to enlarge array of defendants — Defences that can be raised by such added party-defendant**

— *Lis pendens/S. 52 TPA issues* — In instant case, despite having notice and knowledge of injunction by court passed in such pending suit, prohibiting transactions or alienation of suit property, suit property purchased by appellant — Thereafter, in said suit filed by R-1 (plaintiff) buyer under prior CFS against R-2 (original owner/vendor), for specific performance of said prior CFS, appellant filed application for impleadment — High Court rejecting said application on ground that appellant purchased suit property from R-2 knowing fully well that there was injunction by court prohibiting any transactions of said property till disposal of suit — Sustainability — Held, transfer pendente lite is neither illegal nor void ab initio but remains subservient to rights eventually determined by court in pending litigation — Hence, transfer in favour of purchaser pendente lite is effective in transferring title subject to certain obligations as decision of court in a suit is binding not only on litigating parties but also on those who derive title pendente lite

— *Equity's darling and decree enforcement issues* — Appellant purchased entire property that formed subject-matter of R-1's suit during pendency of said suit which was neither bona fide nor without notice of prior CFS — Hence, appellant-transferee pendente lite, held, is not protected under S. 19 of Specific Relief Act against specific performance of prior CFS — Also, if purchaser pendente lite is not made party to pending suit, there may be a situation where transferor pendente lite may not defend title properly as he has no interest remaining, or may collude with plaintiff in which case interest of purchaser pendente lite will be ignored — Also, purchaser pendente lite may be impleaded in such suit, as decree for specific performance of prior CFS can only be enforced against him as he now holds the title/interest which is the subject-matter of the prior CFS and original owner does not hold it any more

† Arising out of SLP (C) No. 24159 of 2009. From the Judgment and Order dated 15-12-2008 of the High Court of Delhi at New Delhi in FAO (OS) No. 295 of 2008

— *CPC impleadment powers* — Court can invoke enabling provision of Or. 22 R. 10 CPC to add appellant-transferee pendente lite as party-defendant — Also, court is empowered to add any person as party at any stage of the proceedings if such person's presence is necessary for effective adjudication of issues involved in the suit

— Hence held, appellant may be impleaded in R-1's suit for specific performance of prior CFS — However, such person as appellant is permitted to take only such defences that are available to original owner/vendor i.e. the person from whom transferee pendente lite derives title/interest — Transfer of Property Act, 1882 — Ss. 52, 54 and S. 40 Paras 2 and 3 — Civil Procedure Code, 1908 — Or. 22 R. 10 and Or. 1 R. 10(2) — Trusts Act, 1882, S. 91

B. **Specific Relief Act, 1963 — S. 19(b) — Specific performance of prior agreement to sell/contract for sale (CFS) against purchaser pendente lite — When available to buyer under prior CFS — Explained — Held, sale of immovable property is immune from specific performance of prior CFS only if transferee has acquired title for valuable consideration, in good faith and without notice of prior CFS — In instant case, appellant-transferee pendente lite, held, is not protected against specific performance of prior CFS at behest of R-1 plaintiff buyer thereunder as transfer in favour of appellant though for valuable consideration, was not in good faith nor was it without notice of said prior CFS — Transfer of Property Act, 1882 — S. 40 Paras 2 and 3, Ss. 3 and 54 — Trusts Act, 1882, S. 91**

C. **Transfer of Property Act, 1882 — S. 3, S. 40 Paras 2 & 3 and S. 54 — Notice — Modes of fastening — Advertisement in newspaper of right under prior agreement to sell/contract for sale (CFS) — Specific Relief Act, 1963 — S. 19(b) — Trusts Act, 1882, Ss. 91 and 96**

D. **Transfer of Property Act, 1882 — S. 52 — Doctrine of lis pendens — What is — Transfer pendente lite — Validity of, and effect of S. 52 — Doctrine of lis pendens is based on ground that it is necessary for administration of justice that decision of a court in a suit should be binding not only on litigating parties but on those who derive title pendente lite — S. 52 however does not annul pendente lite conveyance or transfer or make it void but renders it subservient to rights of parties to a litigation as may be eventually determined by court — Thus, transfer made in favour of subsequent purchaser is subject to riders and restraint orders passed by court, if any**

E. **Transfer of Property Act, 1882 — Ss. 52 and 54 — Transfer/Sale pendente lite in disregard of injunction/restraint order of court — Effect — Held, party committing such breach may incur liability to be punished therefor, but sale by itself may remain valid between parties thereto subject to any directions which competent court may issue in suit against vendor**

F. **Civil Procedure Code, 1908 — Or. 22 R. 10 and Or. 1 R. 10 — Relative scope — Assignment, creation or devolution of interest during pendency of suit — Effect — Impleadment/Addition of party — Held, Or. 22 R. 10 is an enabling provision — Hence, independent of Or. 1 R. 10, court can add transferee pendente lite as party-defendant even if application for impleadment is made only under Or. 1 R. 10**

G. **Civil Procedure Code, 1908 — Or. 1 R. 9 and Or. 22 R. 10 — Transferee pendente lite, when to be made necessary party — Explained — Transfer of Property Act, 1882, S. 52**

H. **Civil Procedure Code, 1908 — Or. 1 R. 10(2) — Power of court to implead any person — Principles reiterated**

Respondent 1-plaintiff filed a suit for specific performance on 1-11-1991 against the defendant *S* (R-2) for the specific performance of the agreement to sell/contract for sale (CFS) dated 29-5-1986. In the said suit the defendant (R-2) stated that till disposal of the suit, the property in question would not be transferred or alienated by the defendant. The defendant also filed a written statement in the said suit. However, while the said suit was pending, in between 31-1-2001 and 3-4-2001 five sale deeds were executed by defendant *S* in favour of the present appellant herein *T*. On the basis of those sale deeds the appellant moved an application under Order 1 Rule 10 CPC, 1908 for impleadment as defendant in the abovesaid suit for specific performance filed by R-1. It was not in dispute that before the institution of the suit for specific performance, R-1 plaintiff had got a notice published in the newspaper on 12-2-1990 regarding the agreement to sell dated 29-5-1986 being in existence in its favour. When this had come to the notice of the appellant, the sister concern of the appellant, namely, *LMI* had sent a legal notice to the defendant and made certain claims against them.

Allowing the appeal, the Supreme Court

Held :

Per Eqbal, J. *(for Thakur, J. and himself)*

Section 52 of the Transfer of Property Act speaks about the doctrine of lis pendens. It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation. (Paras 26 to 29)

Gouri Dutt Maharaj v. *Sk. Sukur Mohammed*, (1947-48) 75 IA 165 : AIR 1948 PC 147; *Kedar Nath Lal* v. *Ganesh Ram*, (1969) 2 SCC 787; *Samarendra Nath Sinha* v. *Krishna Kumar Nag*, AIR 1967 SC 1440 : (1967) 2 SCR 18; *Rajender Singh* v. *Santa Singh*, (1973) 2 SCC 705; *Jayaram Mudaliar* v. *Ayyaswami*, (1972) 2 SCC 200, *relied on*

Radhamadhub Holder v. *Monohur Mookerji*, (1887-88) 15 IA 97; *Nilakant Banerji* v. *Suresh Chunder Mullick*, (1884-85) 12 IA 171; *Moti Lal* v. *Karrab-ul-Din*, (1896-97) 24 IA 170, *cited*

Order 1 Rule 10 CPC empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit. It is manifest that Order 1 Rule 10(2) CPC gives a wider discretion to the court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the court is essential for effective determination of the issues involved in the suit. (Paras 30 to 32)

Vidur Impex and Traders (P) Ltd. v. *Tosh Apartments (P) Ltd.*, (2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1, *applied*

Ramesh Hirachand Kundanmal v. *Municipal Corpn. of Greater Bombay*, (1992) 2 SCC 524, *relied on*

Kasturi v. *Iyyamperumal*, (2005) 6 SCC 733; *Surjit Singh* v. *Harbans Singh*, (1995) 6 SCC 50; *Anil Kumar Singh* v. *Shivnath Mishra*, (1995) 3 SCC 147; *Savitri Devi* v. *District Judge, Gorakhpur*, (1999) 2 SCC 577; *Vijay Pratap* v. *Sambhu Saran Sinha*, (1996) 10 SCC 53; *Tasker* v. *Small*, (1837) 3 My&Cr 63 : (1824-34) All ER Rep 317 : 40 ER 848, *considered*

Amon v. *Raphael Tuck & Sons Ltd.*, (1956) 1 QB 357 : (1956) 2 WLR 372 : (1956) 1 All ER 273; *Dollfus Mieg et Compagnie SA* v. *Bank of England*, (1950) 2 All ER 605, *cited*

Section 19(*b*) of the Specific Relief Act, 1963 makes it very clear that a suit for specific performance cannot be enforced against a person who is a transferee from the vendor for valuable consideration and without notice of the original contract which is sought to be enforced in the suit. (Para 33)

In the instant case, even before the institution of suit for specific performance, when R-1 plaintiff came to know about the activities of R-2 defendant to deal with the property, a public notice was published at the instance of the plaintiff in a newspaper dated 12-2-1990 informing the public in general about the agreement to sell with the plaintiffs. In response to the said notice the sister concern of the appellant *LMI* served a legal notice on the defendant *S* dated 24-6-1990 whereby it has referred the agreement to sell entered into between the plaintiffs and the defendant *S*. Even after the institution of the suit by R-1 plaintiff, the counsel who appeared for the defendant *S* gave an undertaking not to transfer and alienate the suit property before the court. Notwithstanding the order passed by the trial court regarding the undertaking given on behalf of the defendant *S*, and having full notice and knowledge of all these facts, the sister concern of the appellant, namely, *LMI* entered into a series of transactions and finally the appellant *T* got sale deeds executed in their favour by the defendant *S* in respect of suit property. Taking into consideration all these facts, there cannot be any hesitation in holding that the appellant entered into a clandestine transaction with the defendant *S* and got the property transferred in their favour. Hence the appellant *T* cannot be held to be a bona fide purchaser without notice. (Paras 35 to 37)

A decree for specific performance of a contract may be enforced against a person claiming under the defendant by virtue of a title acquired subsequent to the contract. There is no dispute that such transfer made in favour of the subsequent purchaser is subject to the rider provided under Section 52 of the Transfer of Property Act and the restraint order actually passed against the appellant based on its undertaking to the trial court. Hence, in the facts and circumstances of the case and also for the ends of justice the appellant is to be added as party-defendant in the suit. However, it is clarified that the appellant after impleadment as party-defendant shall be permitted to take only such defences which are available to the vendor *S* as the appellant derived title from the vendor on the basis of purchase of the suit property subsequent to the agreement to sell with the plaintiff and during the pendency of the suit. (Paras 39 to 45)

R.C. Chandiok v. *Chuni Lal Sabharwal*, (1970) 3 SCC 140; *Dwarka Prasad Singh* v. *Harikant Prasad Singh*, (1973) 1 SCC 179; *Durga Prasad* v. *Deep Chand*, AIR 1954 SC 75 : 1954 SCR 360, *followed*

Kafiladdin v. *Samiraddin*, AIR 1931 Cal 67, *held, approved*

Thomson Press (India) Ltd. v. *Nanak Builders & Investors (P) Ltd.*, FAO No. 295 of 2008, order dated 15-12-2008 (Del), *reversed*

Daniels v. *Davison*, (1809) 16 Ves Jun 249 : (1803-13) All ER Rep 432 : 33 ER 978; *Potter* v. *Sanders*, (1846) 6 Hare 1 : 67 ER 1057; *Lightfoot* v. *Heron*, (1839) 3 Y&C Ex 586 : 160 ER 835; *Chunder Kant Roy* v. *Krishna Sunder Roy*, ILR (1884) 10 Cal 710; *Kannan* v. *Krishnan*, ILR (1890) 13 Mad 324; *Himatlal Motilal* v. *Vasudev Ganesh Mhaskar*, ILR (1912) 36 Bom 446; *Faki Ibrahim* v. *Faki Gulam Mohidin*, AIR 1921 Bom 459; *Gangaram* v. *Laxman Ganoba Shet Chaudole*, ILR (1916) 40 Bom 498, *cited*

Dart: *Vendors and Purchasers*, 8th Edn., Vol. 2; *Fry on Specific Performance*, 6th Edn., p. 90, *cited*

Per Thakur, J. *(supplementing)*

In the light of the finding of the High Court that the sale in favour of the appellant was a clandestine transaction, it is futile to deny that the specific performance prayed for by R-1 plaintiff was and continues to be enforceable not only against the original owner defendants but also against the appellant, their transferee. Sale of immovable property in the teeth of an earlier agreement to sell is immune from specific performance of an earlier contract for sale only if the transferee has acquired the title for valuable consideration, in good faith and without notice of the original contract. That is evident from Section 19(*b*) of the Specific Relief Act, 1963. Thus, there is no gainsaying that the appellant was not protected against specific performance of the contract in favour of the plaintiff, for even though the transfer in favour of the appellant was for valuable consideration it was not in good faith nor was it without notice of the original contract. (Paras 47 and 48)

[**Ed.**: Section 40 Paras 2 and 3 of the Transfer of Property Act, 1882 and Section 91 of the Trusts Act, 1882 also provide for the same protection as Section 19 of the Specific Relief Act, 1963 (which is the same as Section 27 of the Specific Relief Act, 1877), to a buyer under a prior agreement to sell/contract for sale (CFS) against subsequent gratuitous transferees of the title or subsequent transferees who have acquired the title for valuable consideration but with notice of the prior CFS. A transferee in good faith, without notice for valuable consideration goes by the colourful cachet of "equity's darling". Section 40 Paras 2 and 3 of the Transfer of Property Act, 1882 and Section 91 of the Trusts Act, 1882 protect the right of a buyer under a prior CFS against all subsequent transferees of the title except transferees who qualify as equity's darling. However, the said buyer is entitled only to claim specific performance of his prior CFS, even if the requirements of Section 40 Paras 2 and 3 of the Transfer of Property Act, 1882 or Section 91 of the Trusts Act, 1882 are satisfied, as laid down in *Durga Prasad* v. *Deep Chand*, AIR 1954 SC 75 : 1954 SCR 360 (*see* Para 41 herein). This right to specific performance must be exercised within the three year limitation period which commences "when performance is refused" vide Article 54 of the Limitation Act, 1963, and whether or not to decree specific performance is always in the discretion of the court vide Sections 10 and 20 of the Specific Relief Act, 1963.

In fact, the subsequent transferee of the title not being an equity's darling, holds the title subject to a constructive trust with the buyer under the prior CFS as the beneficiary thereof. Hence, such buyer acquires an equitable interest in respect of the suit property. Such equitable interest is neither proprietary in nature i.e. does not bind the whole world without its notice, knowledge or consent. Nor is such equitable interest a mere contractual/personal right since it

is exigible against a limited class of persons and is more durable than a personal right. Hence, Indian Property Law seems to envisage a trichotomy/triad of rights/entitlements which are possible in respect of a thing/land, in increasing order of durability and exigibility: (1) contractual/personal rights, (2) equitable interests, and (3) proprietary interests.]

The legal position in regard to sale pendente lite is also fairly well settled. A transfer pendente lite is not illegal ipso jure but remains subservient to the pending litigation. Section 52 of the Transfer or Property Act, 1882 does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. (Paras 49 and 50)

Nagubai Ammal v. *B. Shama Rao*, AIR 1956 SC 593; *Vinod Seth* v. *Devinder Bajaj*, (2010) 8 SCC 1 : (2010) 3 SCC (Civ) 212; *A. Nawab John* v. *V.N. Subramaniyam*, (2012) 7 SCC 738 : (2012) 4 SCC (Civ) 324; *Jayaram Mudaliar* v. *Ayyaswami*, (1972) 2 SCC 200; *Sanjay Verma* v. *Manik Roy*, (2006) 13 SCC 608, *relied on*

Bell: *Commentaries on the Laws of Scotland*, *referred to*

There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the decisions of the Supreme Court referred to herein do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent court, there is no reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it, but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor. (Para 53)

It is well settled that no one other than the parties to an agreement to sell is a necessary and proper party to a suit for specific performance thereof. However, a simple reading of Order 22 Rule 10 CPC would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. Thus, independent of Order 1 Rule 10 CPC the prayer for addition/impleadment made by the appellant can be considered in the light of Order 22 Rule 10 CPC and thus the appellant can be added as a party-defendant to the suit. The application which the appellant made was only under Order 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC can always be invoked if the fact situation so demands. (Para 54)

The Supreme Court in many cases has held that a transferee pendente lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. Sometimes, a transferor pendente lite may not even defend the title properly as he has no interest in the same or may collude with the plaintiff in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendente lite can be added as a party-defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee pendente lite acquires the interest in the entire estate that forms the subject-matter of the dispute. (Paras 55 and 56)

Khemchand Shankar Choudhari v. *Vishnu Hari Patil*, (1983) 1 SCC 18; *Amit Kumar Shaw* v. *Farida Khatoon*, (2005) 11 SCC 403; *Rikhu Dev* v. *Som Dass*, (1976) 1 SCC 103, *relied on*

The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the defendant owners in the suit. The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the court may eventually pass therein. Since the appellant has purchased the entire estate that forms the subject-matter of the suit, the appellant is entitled to be added as a party-defendant to the suit. The appellant shall as a result of his addition raise and pursue only such defences as were available and taken by the original defendants and none other. (Para 57)

N-D/51482/CV

Advocates who appeared in this case :

Sunil Gupta, Senior Advocate (Pramod Dayal, Nikunj Dayal, S.D. Salwan and Aditya Garg, Advocates, for the Appellant;

Mahender Rana, Ramesh N. Keshwani, Ram Lal Roy, Deevesh Nagrath, Ms Utkarsha Kohli, Nitish K. Sharma and Dr (Ms) Vipin Gupta, Advocates, for the Respondents.

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1. (2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1, *Vidur Impex and Traders (P) Ltd.* v. *Tosh Apartments (P) Ltd.* 407*g-h*, 414*c*
2. (2012) 7 SCC 738 : (2012) 4 SCC (Civ) 324, *A. Nawab John* v. *V.N. Subramaniyam* 423*e*
3. (2010) 8 SCC 1 : (2010) 3 SCC (Civ) 212, *Vinod Seth* v. *Devinder Bajaj* 423*c*
4. FAO No. 295 of 2008, order dated 15-12-2008 (Del), *Thomson Press (India) Ltd.* v. *Nanak Builders & Investors (P) Ltd.* **(reversed)** 404*d-e*, 406*e*
5. (2006) 13 SCC 608, *Sanjay Verma* v. *Manik Roy* 423*f-g*
6. (2005) 11 SCC 403, *Amit Kumar Shaw* v. *Farida Khatoon* 426*c*
7. (2005) 6 SCC 733, *Kasturi* v. *Iyyamperumal* 407*c*, 412*g-h*
8. (1999) 2 SCC 577, *Savitri Devi* v. *District Judge, Gorakhpur* 410*f-g*, 411*e-f*, 412*a-b*
9. (1996) 10 SCC 53, *Vijay Pratap* v. *Sambhu Saran Sinha* 412*b-c*
10. (1995) 6 SCC 50, *Surjit Singh* v. *Harbans Singh* 407*g-h*, 409*f*, 410*a*, 411*e-f*, 412*a-b*
11. (1995) 3 SCC 147, *Anil Kumar Singh* v. *Shivnath Mishra* 408*g-h*, 414*a*
12. (1992) 2 SCC 524, *Ramesh Hirachand Kundanmal* v. *Municipal Corpn. of Greater Bombay* 417*f-g*
13. (1983) 1 SCC 18, *Khemchand Shankar Choudhari* v. *Vishnu Hari Patil* 425*d-e*
14. (1976) 1 SCC 103, *Rikhu Dev* v. *Som Dass* 427*a*
15. (1973) 2 SCC 705, *Rajender Singh* v. *Santa Singh* 416*c-d*, 416*d*
16. (1973) 1 SCC 179, *Dwarka Prasad Singh* v. *Harikant Prasad Singh* 421*e*
17. (1972) 2 SCC 200, *Jayaram Mudaliar* v. *Ayyaswami* 416*d*, 423*g*
18. (1970) 3 SCC 140, *R.C. Chandiok* v. *Chuni Lal Sabharwal* 421*b-c*
19. (1969) 2 SCC 787, *Kedar Nath Lal* v. *Ganesh Ram* 416*a*, 416*a-b*
20. AIR 1967 SC 1440 : (1967) 2 SCR 18, *Samarendra Nath Sinha* v. *Krishna Kumar Nag* 416*a-b*, 416*c*
21. (1956) 1 QB 357 : (1956) 2 WLR 372 : (1956) 1 All ER 273, *Amon* v. *Raphael Tuck & Sons Ltd.* 418*b-c*, 418*c-d*
22. AIR 1956 SC 593, *Nagubai Ammal* v. *B. Shama Rao* 423*a*

23. AIR 1954 SC 75 : 1954 SCR 360, *Durga Prasad* v. *Deep Chand* 420*f*, 420*f-g*, 421*c*
24. (1950) 2 All ER 605, *Dollfus Mieg et Compagnie SA* v. *Bank of England* 418*c*
25. (1947-48) 75 IA 165 : AIR 1948 PC 147, *Gouri Dutt Maharaj* v. *Sk. Sukur Mohammed* 415*f-g*
26. AIR 1931 Cal 67, *Kafiladdin* v. *Samiraddin* 419*h*, 420*a*, 420*b*, 420*f*, 421*b*
27. AIR 1921 Bom 459, *Faki Ibrahim* v. *Faki Gulam Mohidin* 420*d-e*
28. ILR (1916) 40 Bom 498, *Gangaram* v. *Laxman Ganoba Shet Chaudole* 420*d-e*
29. ILR (1912) 36 Bom 446, *Himatlal Motilal* v. *Vasudev Ganesh Mhaskar* 420*d*
30. (1896-97) 24 IA 170, *Moti Lal* v. *Karrab-ul-Din* 416*c*
31. ILR (1890) 13 Mad 324, *Kannan* v. *Krishnan* 420*d*
32. (1887-88) 15 IA 97, *Radhamadhub Holder* v. *Monohur Mookerji* 416*b-c*
33. (1884-85) 12 IA 171, *Nilakant Banerji* v. *Suresh Chunder Mullick* 416*c*
34. ILR (1884) 10 Cal 710, *Chunder Kant Roy* v. *Krishna Sunder Roy* 420*c-d*
35. (1846) 6 Hare 1 : 67 ER 1057, *Potter* v. *Sanders* 420*c*, 421*b*
36. (1839) 3 Y&C Ex 586 : 160 ER 835, *Lightfoot* v. *Heron* 420*c-d*
37. (1837) 3 My&Cr 63 : (1824-34) All ER Rep 317 : 40 ER 848, *Tasker* v. *Small* 413*d-e*
38. (1809) 16 Ves Jun 249 : (1803-13) All ER Rep 432 : 33 ER 978, *Daniels* v. *Davison* 420*c*

The Judgments† of the Court were delivered by

M.Y. EQBAL, J. (*for Thakur, J. and himself; Thakur, J. supplementing*)— Leave granted. This appeal is directed against the order passed by the Division Bench of the High Court of Delhi in *Thomson Press (India) Ltd.* v. *Nanak Builders & Investors (P) Ltd.*[1] affirming the order of the Single Judge and rejecting the petition filed by the appellant under Order 1 Rule 10 CPC for impleadment as defendants in a suit for specific performance of contract being Suit No. 3426 of 1991 filed by Respondent 1-plaintiff.

2. Although the case has a chequered history, the brief facts of the case can be summarised as under: Mrs Lakhbir Sawhney, Respondent 2 and son, Mr H.S. Sawhney, the predecessors of Respondents 3(*a*) to (*d*) were the owners of the property known as "Ojha House"/"Sawhney Mansion", 'F' Block, Connaught Place, New Delhi. (These respondents shall be referred as "the Sawhneys" for the sake of convenience.) M/s Nanak Builders and Investors (P) Ltd., Respondent 1 is the plaintiff in the suit.

3. Respondent 1-plaintiff filed a suit in the High Court of Delhi being Suit No. 3426 of 1991 against the respondent-defendant Sawhneys for a decree for specific performance of agreement. The case of the respondent-plaintiff is that on 29-5-1986 the respondent-defendants entered into an agreement with the respondent-plaintiff for the sale of an area measuring about 4000 sq ft on the 1st Floor of F-26, Connaught Place, New Delhi on the consideration of Rs 50 lakhs. Out of the said consideration, a sum of Rs 1 lakh was paid by the plaintiffs to the defendants vide Cheque No. 0534224 drawn from Union Bank of India, New Delhi. The aforesaid property shall be referred to as "the suit property" which was in the tenancy

† T.S. Thakur, J. delivered a supplementing judgment.

1 FAO No. 295 of 2008, order dated 15-12-2008 (Del)

of M/s Peerless General Finance Company Ltd. In the said agreement it was agreed inter alia that if the premises are vacated and the plaintiff did not complete the sale on the defendant, getting all permissions, sanctions, etc., the defendants shall have the right to forfeit the money.

4. The plaintiff's further case was that M/s Peerless General Finance Company Ltd. had given a security deposit of Rs 25 lakhs approximately and did not vacate the premises and called upon the defendants that they will vacate the premises only when the defendants make the payment, that too on the expiry of the lease which expired around September 1990. It is alleged by the plaintiff that during the intervening period, it has been making part-payments from time to time out of the said consideration amount. In May 1991, the defendants got the said suit premises vacated from M/s Peerless General Finance Company Ltd. The plaintiffs immediately approached the defendants to receive the balance consideration but the same was avoided by the defendants. A public notice was, therefore, issued in *The Hindustan Times*, New Delhi so that the defendant Sawhneys do not sell, transfer or alienate the said property to any other person. Lastly, it was alleged by the plaintiff that despite being always ready and willing to complete the transaction, the defendants avoided to obtain requisite permission/sanction and clearance, hence the suit was filed.

5. During the intervening period some more development took place. One Living Media India Ltd. (in short "LMI"), said to be a group company of the appellant, M/s Thomson Press (India) Ltd. offered the defendant-respondents to take the suit premises on lease, sometime in the year 1988. The defendant Sawhneys assured LMI that lease would be granted after M/s Peerless vacated the suit property. LMI, accordingly, sent a cheque to the defendant Sawhneys as earnest money in respect of the lease. However, when the Sawhneys wanted to resile from the agreed terms with LMI, a suit was filed by LMI being Suit No. 2872 of 1990 against the Sawhneys in the Delhi High Court for perpetual injunction restraining the Sawhneys from parting with possession of the premises to any third party. The High Court passed the restraint order on 19-9-1990 with regard to the suit property and appointed a Commissioner to report as to who is in possession of the suit premises. It appears that the aforesaid suit filed by LMI was compromised and an order was passed on 8-4-1991 whereby, as per the compromise, the suit property was leased out by defendant Sawhneys in favour of LMI and possession of the property was given to it.

6. On 1-11-1991 the plaintiff M/s Nanak Builders in the meantime filed a suit against the respondent-defendant Sawhneys being Suit No. 3426 of 1991 for specific performance of agreement to sell dated 29-5-1986. In the said suit pursuant to summons issued against the defendant Sawhneys one Mr Raj Panjwani, Advocate accepted notice on behalf of the Sawhneys and stated before the Court that possession of the flat in question is not with the defendants, rather with M/s LMI which was delivered to them by virtue of the lease. Mr Panjwani further stated that till disposal of the suit the property

in question would not be transferred or alienated by the defendants. The defendant Sawhneys also filed a written statement in the said suit.

7. It appears that the defendant Sawhneys had taken a loan from Vijaya Bank and to secure the loan, an equitable* mortgage was created in respect of the suit property. In 1977 a suit was filed by the Bank in the Delhi High Court for recovery and redemption of the mortgaged property. The said suit was decreed on 14-10-1998 and recovery certificate was issued by DRT, Delhi. LMI, a group company of the appellant Company intervened and settled the decree by agreeing to deposit the loan amount of Rs 1.48 crores. LMI cleared all the dues, income tax liability, etc. of the Sawhneys for sale of the property in favour of LMI and its associates. Finally, in between 31-1-2001 and 3-4-2001 five sale deeds were executed by defendant Sawhneys in favour of the present appellant herein M/s Thomson Press India Ltd. On the basis of those sale deeds the appellant moved an application under Order 1 Rule 10 CPC for impleadment as defendants in a suit for specific performance filed by Respondent 1 herein M/s Nanak Builders and Investors (P) Ltd.

8. The learned Single Judge of the Delhi High Court after hearing the parties dismissed the application on the ground that since there was an injunction order passed way back on 4-11-1991 in the suit for specific performance restraining the defendant Sawhneys from transferring or alienating the suit property passed, the purported sale deeds executed by the defendants in favour of the appellant were in violation of the undertaking given by the respondents which was in the nature of injunction. Aggrieved by the said order, the appellant filed an appeal being FAO No. 295 of 2008 which was heard by a Division Bench. The Division Bench affirmed[1] the order of the Single Judge and held that in view of the injunction in the form of undertaking given by the respondent Sawhneys and recorded in the suit proceedings, how the property could be purchased by the appellants in the year 2008. The appellant aggrieved by the aforesaid orders filed this special leave petition.

9. Mr Sunil Gupta, learned Senior Counsel appearing for the appellant assailed the impugned orders as being illegal, erroneous in law and without jurisdiction. The learned Senior Counsel firstly contended that the appellant being the purchaser of the suit property is a necessary and proper party for the complete and effective adjudication of the suit. According to him, the denial of impleadment will be contrary to the principles governing Order 1 Rule 10(2) CPC though he submitted that impleadment as a party is not a matter of right but a matter of judicial discretion to be exercised in favour of a necessary and proper party. The learned Senior Counsel further submitted

* **Ed.**: The nomenclature of "equitable mortgage" which originated in England, it is humbly submitted, misleadingly seems to persist in India as a colloquialism for Mortgages by Deposit of Title Deeds (MDTDs), since MDTDs are full-fledged legal mortgages in India vide Sections 58(*f*) and 59 of the Transfer of Property Act, 1882 read with Section 49, Registration Act, 1908, while in England such mortgages largely continue to take effect only in equity and not at law.

1 *Thomson Press (India) Ltd.* v. *Nanak Builders & Investors (P) Ltd.*, FAO No. 295 of 2008, order dated 15-12-2008 (Del)

that where a subsequent purchaser has purchased a suit property and is deriving its title through the same vendor then he would be a necessary party provided it has purchased with or without notice of the prior contract. He further submitted that after one transaction a pendency of the suit arising therefrom, Section 52 of the Transfer of Property Act does not prohibit the subsequent transaction of transfer of property nor even declares the same to be null and void.

10. The learned Senior Counsel, however, has not disputed the legal proposition that the court would be justified in denying impleadment at the instance of the applicant who has entered a subsequent transaction knowing that there is a court injunction in a pending suit restraining and prohibiting further transaction or alienation of the property. The learned Senior Counsel put heavy reliance on the decisions of the Supreme Court in *Kasturi* v. *Iyyamperumal*[2] for the proposition that an application by the subsequent purchaser for impleadment in a suit for specific performance by a prior transferee does not alter the nature and character of the suit and such a transferee has a right and interest to be protected and deserves to be impleaded in the suit.

11. Mr Gupta strenuously argued that the High Court has not considered the question whether the appellant purchaser had any knowledge of the order of injunction dated 4-11-1991 before entering the sale transaction in 2001. He has submitted that even assuming that the Sawhneys had such a knowledge, the same cannot be held as an objection to the exercise of judicial discretion in favour of the appellant being impleaded in the suit on the application of the appellant itself.

12. Per contra, Mr Mahender Rana, learned counsel appearing for Respondent 1 firstly contended that the suit is at the stage of final hearing and almost all the witnesses have been examined and at this stage the petition for impleadment cannot be and shall not be allowed. The learned counsel drew our attention to the legal notice dated 24-6-1990 and the notice dated 12-2-1990 published in the newspaper and submitted that not only the Sawhneys but the appellant and its sister concern had full notice and knowledge of the pendency of the suit and the order of injunction on the basis of the undertaking given by the Sawhneys that the suit property shall not be assigned or alienated during the pendency of the suit. The learned counsel further contended that as a matter of fact the vendor Sawhneys had committed fraud by incorporating in the sale deed that there was no agreement or any injunction passed in any suit or proceedings. In that view of the matter the application for impleadment has been rightly rejected by the High Court. He placed reliance on *Vidur Impex and Traders (P) Ltd.* v. *Tosh Apartments (P) Ltd.*[3] and *Surjit Singh* v. *Harbans Singh*[4].

2 (2005) 6 SCC 733
3 (2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1
4 (1995) 6 SCC 50

13. Before discussing the decisions of the Supreme Court relied upon by the parties, we would like to highlight some of the important facts and developments in the case which are not disputed by the parties.

14. As noted above, Respondent 1-plaintiff filed the suit for specific performance on 1-11-1991 against the defendant Sawhneys for the specific performance of the agreements dated 29-5-1986. In the said suit, the defendant Sawhneys through Mr Raj Panjwani, Advocate accepted summons on their behalf and filed vakalatnama. The said Advocate Mr Panjwani, inter alia, stated before the Court that the defendants would not transfer or alienate the flat in question. The order dated 4-11-1991 was incorporated in the order-sheet as under:

> "Mr Panjwani accepts notice. Mr Panjwani states that the possession of the flat in question is not with the defendants. The possession is with M/s Living Media India Ltd. which was delivered to them under the orders of this Court. Mr Panjwani states that till the disposal of this application the defendants would not transfer or alienate the flat in question. Let the reply be filed within 6 weeks with advance copy to the counsel for the plaintiff, who may file the rejoinder within 2 weeks thereafter. List this IA for disposal on 10-3-1992."

15. It is also not in dispute that before the institution of the suit the respondent-plaintiff got a notice published in the newspaper on 12-2-1990 in *The Hindustan Times*, Delhi Edition. When this came to the notice of the appellant, the sister concern of the appellant, namely, M/s Living Media India Ltd. sent a legal notice to the defendant Sawhneys dated 24-6-1990 and called upon them to execute the lease deed in respect of the suit property in terms of the agreement. In the said notice dated 24-6-1990 the sister concern of the appellant in Para 8 stated as under:

> "That a public notice appeared in *The Hindustan Times*, Delhi Edition on 12-2-1990. As per this notice one M/s Nanak Builders and Investors (P) Ltd. claim that you have entered into an agreement to sell the premises in question to them. A copy of this notice is being endorsed to their counsel mentioned in the public notice. My client further learns that you have approached a number of property brokers also for the disposal of the property."

16. The question, therefore, that falls for consideration is as to whether if the appellant who is the transferee pendente lite having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order 1 Rule 10 on the basis of sale deeds executed in their favour by the defendant Sawhneys.

17. Before coming to the question involved in the case, we would like to discuss the decisions of this Court relied upon by the parties. In *Anil Kumar Singh* v. *Shivnath Mishra*[5], in a suit for specific performance of contract a petition was filed under Order 6 Rule 17 CPC seeking leave to amend the plaint by impleading the respondent as party-defendant in the suit. The

5 (1995) 3 SCC 147

contention of the petitioner was that the vendor had colluded with his sons and wife and obtained a collusive decree in a suit under the U.P. Zamindari Abolition and Land Reforms Act. It was contended that by operation of law they became the co-sharers of the property to be conveyed under the agreement and, therefore, he is a necessary party. The trial court dismissed the petition and on revision the High Court of Allahabad affirmed the order. In an appeal this Court refused to interfere with the order and observed: (SCC pp. 149-50, paras 5 & 8-9)

> "5. In this case, since the suit is based on agreement of sale said to have been executed by Mishra, the sole defendant in the suit, the subsequent interest said to have been acquired by the respondent by virtue of a decree of the court is not a matter arising out of or in respect of the same act or transaction or series of acts or transactions in relation to the claim made in the suit.
>
> * * *
>
> 8. The question is whether the person who has got his interest in the property declared by an independent decree but not a party to the agreement of sale, is a necessary and proper party to effectually and completely adjudicate upon and settle all the questions involved in the suit. The questions before the court in a suit for the specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance.
>
> 9. Sub-rule (2) of Rule 10 of Order 1 provides that the court may either upon or without an application of either party, add any party whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party."

18. In *Surjit Singh*[4] a similar question arose for consideration before this Court. In that case, on the death of one Janak Singh, being the head of the family, a suit for partition and separate possession was filed by and between the parties. A preliminary decree was passed and while proceeding for final decree was pending, the trial court passed an order restraining all the parties from alienating or otherwise transferring in any manner any part of the property involved in the suit. In spite of the aforesaid order one of the parties assigned the right under the preliminary decree involving the wife of his lawyer. On the basis of the assigned deed the assignee made an application under Order 22 Rule 10 CPC for impleadment as party to the proceeding. The petition was allowed by the trial court and affirmed in appeal by the Additional District Judge and then in revision by the High Court.

4 *Surjit Singh* v. *Harbans Singh*, (1995) 6 SCC 50

19. The matter came before this Court. Allowing the appeal and setting aside the orders passed by the courts below, this Court observed: (*Surjit Singh case*[4], SCC pp. 52-53, para 4)

"*4*. As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is per se property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property per se had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the court orders otherwise. The court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, the respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of lis pendens are altogether on a different footing. We do not propose to examine their involvement presently. All what is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit. On that basis, there was no cause for going into the question of interpretation of Paras 13 and 14 of the settlement deed. The path treaded by the courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the courts below and reject the application of the assignees for impleadment under Order 22 Rule 10 CPC."

20. In *Savitri Devi* v. *District Judge, Gorakhpur*[6] a three-Judge Bench of this Court considered a similar question under Order 1 Rule 10 CPC. The fact of the case was that the appellant filed a suit for maintenance and for creation of charge over the ancestral property. She also applied for an interim order of injunction restraining her sons from alienating the property during the pendency of the suit. But a vakalatnama was filed on behalf of the defendants and the 4th defendant also filed an affidavit purporting to be on behalf of the defendants, expressing their concern that during the pendency of the case the suit property will not be sold. In the light of consent of the counsel the Court passed an order on 18-8-1992 directing the parties not to transfer the disputed

4 *Surjit Singh* v. *Harbans Singh*, (1995) 6 SCC 50
6 (1999) 2 SCC 577

property till the disposal of the suit. In spite of the aforesaid order one of the defendants sold 1/4th share of the land to the 3rd respondent and 1/4th share in another land to the 4th respondent on 19-8-1992 and further sold 1/4th share to the 5th respondent. On the basis of this transfer the transferee Respondents 3-5 filed an application under Order 1 Rule 10 CPC for impleading them as parties to the suit. The application was allowed at all stages. This Court noticed the relevant facts which have been incorporated in para 4 of the decision which is reproduced hereunder: (SCC p. 579)

> "*4*. The trial court passed a detailed order on 14-7-1997 granting the application of Respondents 3 to 5 and directed the plaintiff to implead them as defendants in the suit. In the order of the trial court, reference has been made to an application filed by the first defendant to the effect that he was not earlier aware of the case and the 4th defendant had forged his signature and filed a bogus vakalatnama. He had also alleged that the order of injunction was obtained fraudulently on 18-8-1992. The trial court has also referred to an application under Section 340 CrPC filed by the first defendant and observed that the same had been dismissed by order dated 20-12-1992. There is also a reference in the order of the trial court in the High Court filed by the plaintiff for quashing orders dated 10-11-1995 and 19-4-1996 passed in the suit and a miscellaneous civil appeal arising from the suit wherein Respondents 3 to 5 had been impleaded as parties. It is seen from the order of the trial court that certain proceedings under Order 39 Rule 2-A CPC concerning the question of attachment of the properties sold were also pending. It is only after taking note of all those facts, the trial court allowed the application of Respondents 3 to 5 to implead them as parties to the suit."

21. This Court further noticed the point taken by the appellant based on the principles laid down in *Surjit Singh case*[4]. Allowing the application this Court held: (*Savitri Devi case*[6], SCC p. 580, para 8)

> "*8*. The facts set out by us in the earlier paragraphs are sufficient to show that there is a dispute as to whether the first defendant in the suit was a party to the order of injunction made by the court on 18-8-1992. The proceedings for punishing him for contempt are admittedly pending. The plea raised by him that the first respondent had played a fraud not only against him but also on the court would have to be decided before it can be said that the sales effected by the first defendant were in violation of the order of the court. The plea raised by Respondents 3 to 5 that they were bona fide transferees for value in good faith may have to be decided before it can be held that the sales in their favour created no interest in the property. The aforesaid questions have to be decided by the court either in the suit or in the application filed by Respondents 3 to 5 for impleadment in the suit. If the application for impleadment is thrown out

4 *Surjit Singh* v. *Harbans Singh*, (1995) 6 SCC 50
6 *Savitri Devi* v. *District Judge, Gorakhpur*, (1999) 2 SCC 577

without a decision on the aforesaid questions, Respondents 3 to 5 will certainly come up with a separate suit to enforce their alleged rights which means a multiplicity of proceedings. In such circumstances, it cannot be said that Respondents 3 to 5 are neither necessary nor proper parties to the suit."

22. While referring to *Surjit Singh case*[4] this Court in *Savitri Devi case*[6] noticed that in that case there was no dispute that the assignors and the assignees had knowledge of the order of injunction passed by the Court. On those facts, this Court held that the deed of assignment was not capable of conveying any right to the assignees and the order of impleadment of the assignees as parties was unsustainable.

23. In *Vijay Pratap* v. *Sambhu Saran Sinha*[7] a petition was filed under Order 1 Rule 10 CPC in a suit for specific performance for impleading him as party in place of his father on the ground that the father during his lifetime alleged to have entered into a compromise. The trial court rejecting the petition held that the petitioners are neither necessary nor proper parties to the suit. On revision this Court dismissing the same held as under: (SCC pp. 54-55, para 2)

"2. The trial court accordingly held that the petitioners are neither necessary nor proper parties to the suit. On revision, the High Court upheld the same. Shri Sanyal, the learned counsel for the petitioners contended that their father had not signed the relinquishment deed and the signatures appended to it were not that of him. The deed of relinquishment said to have been signed by the father of the petitioners was not genuine. These questions are matters to be taken into consideration in the suit before the relinquishment deed and compromise memo between the other contesting respondents were acted upon and cannot be done in the absence of the petitioners. The share of the petitioners will be affected and, therefore, it would prejudice their right, title and interest in the property. We cannot go into these questions at this stage. The trial court has rightly pointed that the petitioners are necessary and proper parties so long as the alleged relinquishment deed said to have been signed by the deceased father of the petitioners is on record. It may not bind the petitioners but whether it is true or valid or binding on them are all questions which in the present suit cannot be gone into. Under those circumstances, the courts below were right in holding that the petitioners are not necessary and proper parties but the remedy is elsewhere. If the petitioners have got any remedy it is open to them to avail of the same according to law."

24. In *Kasturi case*[2] a three-Judge Bench of this Court said that in a suit for specific performance of contract for sale an impleadment petition was

4 *Surjit Singh* v. *Harbans Singh*, (1995) 6 SCC 50
6 *Savitri Devi* v. *District Judge, Gorakhpur*, (1999) 2 SCC 577
7 (1996) 10 SCC 53
2 *Kasturi* v. *Iyyamperumal*, (2005) 6 SCC 733

filed for addition as party-defendant on the ground that the petitioners were claiming not under the vendor but adverse to the title of the vendor. In other words, on the basis of independent title in the suit property the petitioner sought to be added as a necessary party in the suit. Rejecting the petition this Court held as under: (SCC pp. 739-41, paras 11 & 14)

> "*11*. As noted herein earlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in the suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker* v. *Small*[8] made the following observations: (ER pp. 850-51)
>
> > 'It is not disputed that, generally, to a bill *for a specific performance of a contract of sale, the parties to the contract only are the proper parties*; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The court assumes jurisdiction in such cases, because a court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. *But, in equity, as well as at law, the contract constitutes the right, and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it.*'
>
> * * *
>
> *14*. Keeping the principles as stated above in mind, let us now, on the admitted facts of this case, first consider whether Respondents 1 and 4 to 11 are necessary parties or not. In our opinion, Respondents 1 and 4 to 11 are not necessary parties as an effective decree could be passed in their absence as they had not purchased the contracted property from the

8 (1837) 3 My&Cr 63 : (1824-34) All ER Rep 317 : 40 ER 848

vendor after the contract was entered into. They were also not necessary parties as they would not be affected by the contract entered into between the appellant and Respondents 2 and 3. In *Anil Kumar Singh* v. *Shivnath Mishra*[5], it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at para 9, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation: (SCC p. 150)

> '*9. … Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party.*' " (emphasis in original)

25. In *Vidur Impex*[3] the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though total strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note of all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Para 41 is worth quoting hereinbelow: (SCC p. 413)

> "*41.* Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:
>
> *41.1.* The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.
>
> *41.2.* A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.
>
> *41.3.* A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.
>
> *41.4.* If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

5 (1995) 3 SCC 147

3 *Vidur Impex and Traders (P) Ltd.* v. *Tosh Apartments (P) Ltd.*, (2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment."

26. It would also be worth discussing some of the relevant laws in order to appreciate the case on hand. Section 52 of the Transfer of Property Act speaks about the doctrine of lis pendens. Section 52 reads as under:

"**52.** ***Transfer of property pending suit relating thereto***.—During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation.

27. Discussing the principles of lis pendens, the Privy Council in *Gouri Dutt Maharaj* v. *Sk. Sukur Mohammed*[9] observed as under: (IA p. 170)

"... The broad purpose of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. The applicability of the section cannot depend on matters of proof or the strength or weakness of the case on one side or the other in bona fide proceedings. To apply any such test is to misconceive the object of the enactment and, in the view of the Board, the learned

9 (1947-48) 75 IA 165 : AIR 1948 PC 147

Subordinate Judge was in error in this respect in laying stress, as he did, on the fact that the agreement of 8-6-1932, had not been registered."

28. In *Kedar Nath Lal* v. *Ganesh Ram*[10] this Court referred the earlier decision in *Samarendra Nath Sinha* v. *Krishna Kumar Nag*[11] and observed: (*Kedar Nath Lal case*[10], SCC p. 792, para 17)

"*17.* … '*16.* … The purchaser pendente lite under this doctrine is bound by the result of the litigation on the principle that since the result must bind the party to it so must it bind the person deriving his right, title and interest from or through him. This principle is well illustrated in *Radhamadhub Holder* v. *Monohur Mookerji*[12] where the facts were almost similar to those in the instant case. It is true that Section 52 strictly speaking does not apply to involuntary alienations such as court sales but it is well established that the principle of lis pendens applies to such alienations. (See *Nilakant Banerji* v. *Suresh Chunder Mullick*[13] and *Moti Lal* v. *Karrab-ul-Din*[14])' (*Samarendra Nath case*[11], AIR p. 1445, para 16)"

29. The aforesaid Section 52 of the Transfer of Property Act again came up for consideration before this Court in *Rajender Singh* v. *Santa Singh*[15] and Their Lordships with approval of the principles laid down in *Jayaram Mudaliar* v. *Ayyaswami*[16] reiterated: (*Rajender Singh case*[15], SCC p. 711, para 15)

"*15.* The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject-matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of lis pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject-matter of a litigation, to the power and jurisdiction of the court so as to prevent the object of a pending action from being defeated."

30. In the light of the settled principles of law on the doctrine of lis pendens, we have to examine the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 Rule 10 empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the

10 (1969) 2 SCC 787 : AIR 1970 SC 1717
11 AIR 1967 SC 1440 : (1967) 2 SCR 18
12 (1887-88) 15 IA 97
13 (1884-85) 12 IA 171
14 (1896-97) 24 IA 170
15 (1973) 2 SCC 705 : AIR 1973 SC 2537
16 (1972) 2 SCC 200 : (1973) 1 SCR 139

court is necessary or proper for effective adjudication of the issue involved in the suit.

31. Order 1 Rule 10 CPC reads as under:

"**10.** ***Suit in name of wrong plaintiff***.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) ***Court may strike out or add parties***.—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) ***Where defendant added, plaint to be amended***.—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

From the bare reading of the aforesaid provision, it is manifest that sub-rule (2) of Rule 10 gives a wider discretion to the court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the court is essential for effective determination of the issues involved in the suit.

32. Considering the aforesaid provisions, this Court in *Ramesh Hirachand Kundanmal* v. *Municipal Corpn. of Greater Bombay*[17] held as under: (SCC p. 531, para 14)

"*14*. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved

17 (1992) 2 SCC 524

and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon* v. *Raphael Tuck & Sons Ltd.*[18], wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie SA* v. *Bank of England*[19], that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated: (*Amon case*[18], QB p. 371)

> '... the test is: "May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights?" ' "

33. At this juncture, we would also like to refer to Section 19 of the Specific Relief Act which reads as under:

> "**19.** ***Relief against parties and persons claiming under them by subsequent title***.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—
>
> (*a*) either party thereto;
>
> (*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
>
> (*c*) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
>
> (*d*) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
>
> (*e*) when the promoters of a company have, before its incorporation entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:
>
> Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract."

From the bare reading of the aforesaid provision, it is manifest that a contract for specific performance may be enforced against the parties to the contract and the persons mentioned in the said section. Clause (*b*) of Section 19

18 (1956) 1 QB 357 : (1956) 2 WLR 372 : (1956) 1 All ER 273
19 (1950) 2 All ER 605

makes it very clear that a suit for specific performance cannot be enforced against a person who is a transferee from the vendor for valuable consideration and without notice of the original contract which is sought to be enforced in the suit.

34. In the light of the aforesaid discussion both on facts and law, we shall now examine some of the relevant facts in order to come to right conclusion.

35. As noticed above, even before the institution of suit for specific performance when the plaintiff came to know about the activities of the Sawhneys to deal with the property, a public notice was published at the instance of the plaintiff in a newspaper *The Hindustan Times* dated 12-2-1990 (Delhi Edition) informing the public in general about the agreement with the plaintiffs. In response to the said notice the sister concern of the appellant M/s Living Media India Ltd. served a legal notice on the defendant Sawhneys dated 24-6-1990 whereby it has referred the "agreement to sell" entered into between the plaintiffs and the defendant Sawhneys.

36. Even after the institution of the suit, the counsel who appeared for the defendant Sawhneys gave an undertaking not to transfer and alienate the suit property. Notwithstanding the order passed by the Court regarding the undertaking given on behalf of the defendant Sawhneys, and having full notice and knowledge of all these facts, the sister concern of the appellant, namely, Living Media India Ltd. entered into a series of transactions and finally the appellant M/s Thomson Press got a sale deed executed in their favour by the Sawhneys in respect of suit property.

37. Taking into consideration all these facts, we have no hesitation in holding that the appellant entered into a clandestine transaction with the defendant Sawhneys and got the property transferred in their favour. Hence the appellant M/s Thomson Press cannot be held to be a bona fide purchaser, without notice.

38. On perusal of the two orders passed by the Single Judge and the Division Bench of the High Court, it reveals that the High Court has not gone into the question as to whether if a person who purchases the suit property in violation of the order of injunction, and having sufficient notice and knowledge of the agreement, need to be added as party for passing an effective decree in the suit.

39. As discussed above, a decree for specific performance of a contract may be enforced against a person who claimed under the plaintiff (*sic* defendant), and title acquired subsequent to the contract. There is no dispute that such transfer made in favour of the subsequent purchaser is subject to the rider provided under Section 52 of the Transfer of Property Act and the restraint order passed by the Court.

40. The aforesaid question was considered by the Calcutta High Court in *Kafiladdin* v. *Samiraddin*[20], where Their Lordships referred to the English

20 AIR 1931 Cal 67

law on this point and quoted one of the passages of the book authored by Dart, on '*Vendors and Purchasers*', 8th Edn., Vol. 2, which reads as under: (*Kafiladdin case*[20], AIR p. 68)

> " 'Equity will enforce specific performance of the contract for sale against the vendor himself and against all persons claiming under him by a title arising subsequently to the contract except purchasers for valuable consideration who have paid their money and taken a conveyance without notice to the original contract.' "

Discussing elaborately, the Court finally observed: (*Kafiladdin case*[20], AIR p. 68)

> "This statement of the law is exactly what is meant by the first two clauses of Section 27 of the Specific Relief Act. It is not necessary to refer to the English cases in which decrees have been passed against both the contracting party and the subsequent purchaser. It is enough to mention some of them: *Daniels* v. *Davison*[21], *Potter* v. *Sanders*[22] and *Lightfoot* v. *Heron*[23]. The question did not pertinently arise in any reported case in India; but decrees in cases of specific performance of contract have been passed in several cases in different forms. In *Chunder Kant Roy* v. *Krishna Sunder Roy*[24] the decree passed against the contracting party only was upheld. So it was in *Kannan* v. *Krishnan*[25]. In *Himatlal Motilal* v. *Vasudev Ganesh Mhaskar*[26] the decree passed against the contracting defendant and the subsequent purchaser was approved. In *Faki Ibrahim* v. *Faki Gulam Mohidin*[27] the decree passed against the subsequent purchaser only was adopted. In *Gangaram* v. *Laxman Ganoba Shet Chaudole*[28] the suit was by the subsequent purchaser and the decree was that he should convey the property to the person holding the prior agreement to sale. It would appear that the procedure adopted in passing decrees in such cases is not uniform. But it is proper that English procedure supported by the Specific Relief Act should be adopted. The apparent reasoning is that unless both the contracting party and the subsequent purchaser join in the conveyance it is possible that subsequently difficulties may arise with regard to the plaintiff's title."

41. The Supreme Court in *Durga Prasad* v. *Deep Chand*[29] referred to the aforementioned decision of the Calcutta High Court in *Kafiladdin case*[20] and finally held: (*Durga Prasad case*[29], AIR p. 81, para 42)

20 *Kafiladdin* v. *Samiraddin*, AIR 1931 Cal 67
21 (1809) 16 Ves Jun 249 : (1803-13) All ER Rep 432 : 33 ER 978
22 (1846) 6 Hare 1 : 67 ER 1057
23 (1839) 3 Y&C Ex 586 : 160 ER 835
24 ILR (1884) 10 Cal 710
25 ILR (1890) 13 Mad 324
26 ILR (1912) 36 Bom 446
27 AIR 1921 Bom 459
28 ILR (1916) 40 Bom 498
29 AIR 1954 SC 75 : 1954 SCR 360

"*42*. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in *Kafiladdin* v. *Samiraddin*[20], and appears to be the English practice. (See *Fry on Specific Performance*, 6th Edn., p. 90, para 207 and also *Potter* v. *Sanders*[22].) We direct accordingly."

42. Again in *R.C. Chandiok* v. *Chuni Lal Sabharwal*[30] this Court referred to their earlier decision and observed: (SCC p. 146, para 9)

"*9*. It is common ground that the plot in dispute has been transferred by the respondents and therefore the proper form of the decree would be the same as indicated at SCR p. 369 in *Durga Prasad* v. *Deep Chand*[29] viz.

> 'to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff'. (AIR p. 81, para 42)

We order accordingly. The decree of the courts below is hereby set aside and the appeal is allowed with costs in this Court and the High Court."

43. This Court again in *Dwarka Prasad Singh* v. *Harikant Prasad Singh*[31] subscribed to its earlier view and held that in a suit for specific performance against a person with notice of a prior agreement of sale is a necessary party.

44. Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the appellant is to be added as party-defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside.

45. Before parting with the order, it is clarified that the appellant after impleadment as party-defendant shall be permitted to take all such defences which are available to the vendor Sawhneys as the appellant derived title, if any, from the vendor on the basis of purchase of the suit property subsequent to the agreement with the plaintiff and during the pendency of the suit.

20 *Kafiladdin* v. *Samiraddin*, AIR 1931 Cal 67
22 (1846) 6 Hare 1 : 67 ER 1057
30 (1970) 3 SCC 140 : AIR 1971 SC 1238
29 AIR 1954 SC 75 : 1954 SCR 360
31 (1973) 1 SCC 179 : AIR 1973 SC 655

T.S. THAKUR, J. (*supplementing*)— I have had the advantage of going through the order proposed by my esteemed Brother M.Y. Eqbal, J. While I entirely agree with the conclusion that the appellant ought to be added as a party-defendant to the suit, I wish to add a few lines of my own.

47. There are three distinct conclusions which have been drawn by Eqbal, J. in the judgment proposed by His Lordship. The first and foremost is that the appellant was aware of the "agreement to sell" between the plaintiff and the defendants in the suit. Publication of a notice in *The Hindustan Times*, Delhi Edition, and the legal notice which Living Media India Ltd., the appellant's sister concern, sent to the defendants indeed left no manner of doubt that the appellant was aware of a pre-existing agreement to sell between the plaintiff and the defendants. It is also beyond dispute that the sale of the suit property in favour of the appellant was in breach of a specific order of injunction passed by the trial court. As a matter of fact, the sale deeds executed by the defendants falsely claimed that there was no impediment in their selling the property to the appellant even though such an impediment in the form of a restraint order did actually exist forbidding the defendants from alienating the suit property. The High Court was in that view justified in holding that the sale in favour of the appellant was a clandestine transaction which finding has been rightly affirmed in the order proposed by my esteemed Brother, and if I may say so with great respect for good and valid reasons.

48. In the light of the above finding it is futile to deny that the specific performance prayed for by the plaintiff was and continues to be enforceable not only against the original owner defendants but also against the appellant, their transferee. Sale of immovable property in the teeth of an earlier agreement to sell is immune from specific performance of an earlier contract for sale only if the transferee has acquired the title for valuable consideration, in good faith and without notice of the original contract. That is evident from Section 19(*b*) of the Specific Relief Act which is to the following effect:

> "**19.** ***Relief against parties and persons claiming under them by subsequent title***.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—
>
> (*a*) either party thereto;
>
> (*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;"

There is thus no gainsaying that the appellant was not protected against specific performance of the contract in favour of the plaintiff, for even though the transfer in favour of the appellant was for valuable consideration it was not in good faith nor was it without notice of the original contract.

49. The second aspect which the proposed judgment succinctly deals with is the effect of a sale pendente lite. The legal position in this regard is

also fairly well settled. A transfer pendente lite is not illegal ipso jure but remains subservient to the pending litigation. In *Nagubai Ammal* v. *B. Shama Rao*[32] this Court while interpreting Section 52 of the Transfer of Property Act observed: (AIR p. 602, para 25)

> "*25.* … the words 'so as to affect the rights of any other party thereto under any decree or order which may be made therein', make it clear that the transfer is good except to the extent that it might conflict with rights decreed under the decree or order. It is in this view that transfers pendente lite have been held to be valid and operative as between the parties thereto."

50. To the same effect is the decision of this Court in *Vinod Seth* v. *Devinder Bajaj*[33] wherein this Court held that Section 52 does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. The following passage in this regard is apposite: (SCC p. 20, para 42)

> "*42.* It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit."

51. The decision of this Court in *A. Nawab John* v. *V.N. Subramaniyam*[34] is a recent reminder of the principle of law enunciated in the earlier decisions. This Court in that case summed up the legal position thus: (SCC p. 746, para 18)

> "*18.* … '*12.* … The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.'†"

52. We may finally refer to the decision of this Court in *Jayaram Mudaliar* v. *Ayyaswami*[16] in which were extracted with approval observations

32 AIR 1956 SC 593
33 (2010) 8 SCC 1 : (2010) 3 SCC (Civ) 212
34 (2012) 7 SCC 738 : (2012) 4 SCC (Civ) 324
† **Ed.**: As observed in *Sanjay Verma* v. *Manik Roy*, (2006) 13 SCC 608, p. 612, para 12.
16 (1972) 2 SCC 200

made on the doctrine of lis pendens in *Commentaries on the Laws of Scotland*, by Bell. This Court said: (SCC p. 217, para 43)

> "*43.* … Bell, in his *Commentaries on the Laws of Scotland* said, that it was grounded on the maxim: *Pendente lite nibil innovandum*. He observed:
>
> > 'It is a general rule which seems to have been recognised in all regular systems of jurisprudence, that during the pendence of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to take that estate as it stands in the person of the seller, and to be bound by the claims which shall ultimately be pronounced.' "

53. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor.

54. The third dimension which arises for consideration is about the right of a transferee pendente lite to seek addition as a party-defendant to the suit under Order 1 Rule 10 CPC. I have no hesitation in concurring with the view that no one other than the parties to an agreement to sell is a necessary and proper party to a suit. The decisions of this Court have elaborated that aspect sufficiently making any further elucidation unnecessary. The High Court has understood and applied the legal propositions correctly while dismissing the application of the appellant under Order 1 Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order 22 Rule 10 CPC, which is as under:

> "**10.** ***Procedure in case of assignment before final order in suit.***—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.
>
> (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

A simple reading of the above provision would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order 1 Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by the counsel for the respondents that Order 22 Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party-defendant. Such being the position all that is required to be examined is whether a transferee pendente lite could in a suit for specific performance be added as a party-defendant and, if so, on what terms.

55. We are not on virgin ground insofar as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee pendente lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. In *Khemchand Shankar Choudhari* v. *Vishnu Hari Patil*[35] this Court held that: (SCC p. 21, para 6)

> "*6.* … The position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding…."

Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The following passage in this regard is apposite: (SCC pp. 20-21, para 6)

> "*6.* Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject-matter of a suit from any of the parties to the suit will be bound insofar as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. *Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be*

35 (1983) 1 SCC 18

so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an Official Receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an Official Receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out." (emphasis supplied)

56. To the same effect is the decision of this Court in *Amit Kumar Shaw* v. *Farida Khatoon*[36] wherein this Court held that a transferor pendente lite may not even defend the title properly as he has no interest in the same or may collude with the plaintiff in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendente lite can be added as a party-defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee pendente lite acquires interest in the entire estate that forms the subject-matter of the dispute. This Court observed: (SCC p. 411, para 16)

"*16.* The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. *A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests.* The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case." (emphasis supplied)

36 (2005) 11 SCC 403

To the same effect is the decision of this Court in *Rikhu Dev* v. *Som Dass*[37].

57. To sum up:

57.1. The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the defendant owners in the suit.

57.2. The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

57.3. Since the appellant has purchased the entire estate that forms the subject-matter of the suit, the appellant is entitled to be added as a party-defendant to the suit.

57.4. The appellant shall as a result of his addition raise and pursue only such defences as were available and taken by the original defendants and none other.

58. With the above additions, I agree with the order proposed by my esteemed Brother M.Y. Eqbal, J. that this appeal be allowed and the appellant be added as party-defendant to the suit in question.

(2013) 5 Supreme Court Cases 427

(BEFORE DR B.S. CHAUHAN AND V. GOPALA GOWDA, JJ.)

RAJASTHAN STATE INDUSTRIAL DEVELOPMENT AND INVESTMENT CORPORATION .. Appellant;

Versus

SUBHASH SINDHI COOPERATIVE HOUSING SOCIETY, JAIPUR AND OTHERS .. Respondents.

Civil Appeals No. 7254 of 2003† with No. 853 of 2013, decided on February 12, 2013

A. **Land Acquisition Act, 1894 — Ss. 4, 6, 16 and 48 — Void transfers qua Government i.e. sale of land after issuance of S. 4(1) notification — Transferee of such void sale claiming release of land from acquiring authorities on basis of illegal circulars on grounds of parity — Non-tenability of claim — Claim of release of said land to said transferee i.e. R-1 Housing Society, held, was completely non-tenable — Fact that State authorities had illegally released land to other persons claiming title under similar void sales was not a ground to perpetuate the illegality (*See* Shortnote *C*) — Impugned High Court order directing said release, set aside — Constitution of India — Arts. 226, 136 and 14 — Transfer of Property Act, 1882 — Ss. 8 and 54 — Nemo dat quod non habet**

(Paras 13, 14, 17 to 20, 47.1 and 47.2)

37 (1976) 1 SCC 103

† From the Judgment and Order dated 30-7-2002 of the High Court of Judicature of Jaipur Bench, Jaipur in DB CWP No. 454 of 1993

(2022) 12 Supreme Court Cases 321

2J

(BEFORE K.M. JOSEPH AND P.S. NARASIMHA, JJ.)

G.T. GIRISH . . Appellant;

Versus

Y. SUBBA RAJU (DEAD) BY LEGAL REPRESENTATIVES AND ANOTHER . . Respondents.

Civil Appeals No. 380 of 2022† with No. 381 of 2022‡, decided on January 18, 2022

A. **Contract and Specific Relief — Specific Relief Act, 1963 — S. 9 — Specific performance of contract — When barred — Illegality of contract or its subject-matter — Applicability of S. 23 of the Contract Act, 1872**

— Held, whatever may be intention of parties, a contract which is expressly or impliedly prohibited by a statute, or is violative of S. 23 of the Contract Act in any other way, cannot be enforced by court — However, where in a case for specific performance of agreement to sell, the sale is not prohibited, but permission or approval is required from some authority, held, such a contract is enforceable and would not attract S. 23 of the Contract Act — In present case agreement to sell, both expressly and impliedly, would defeat object of City of Bangalore Improvement (Allotment of Sites) Rules, 1972 which are statutory in nature — Hence, contract was patently illegal and could not be enforced

— BDA made an allotment of plot on 4-4-1979 to Defendant 1 — Lease-cum-sale agreement was also executed on same date — It is while so that on 17-11-1982, plaintiff entered into agreement with Defendant 1 — Under allotment, Defendant 1 was put in possession of site — If agreement between plaintiff and Defendant 1 is taken as it is and it is enforced, following would be consequences — Allotment to Defendant 1 was made on 4-4-1979 — In fact, Defendant 1 was obliged, in law, to construct a residential building within two years under R. 17(6) of the 1972 Rules — No doubt, time could be extended thereunder — But, at the time, agreement dt. 17-11-1982 was entered into, Defendant 1 was already in breach — Agreement between parties contemplated giving a short shrift to mandate of law — This is clear from fact that under agreement, Defendant 1 was obliged to sell site as it is

— Construction of building became a practical impossibility — Price, which was agreed upon, was qua site alone — Consideration and other terms of agreement, in other words, ruled out possibility of a residential building being constructed by Defendant 1, who as allottee, was, under law, obliged to construct building — Assuming that construction was put up, which assumption must be premised on possession not being handed over to plaintiff

† Arising out of SLP (C) No. 6857 of 2017. Arising from the impugned Final Judgment and Order in *Y. Subba Raju* v. *Jayalakshmamma*, 2016 SCC OnLine Kar 8982 (Karnataka High Court, RFA No. 1307 of 2002, dt. 24-8-2016) **[Reversed]**

‡ Arising out of SLP (C) No. 6858 of 2017

and which is contrary, not only to terms of agreement, but also pleading of plaintiff and consistent stand in evidence adduced on behalf of plaintiff and even proceeding, however, on basis that plaintiff has failed to establish that possession was handed over to him on date of agreement and that possession continued with Defendant 1, terms of agreement, which included, price being fixed for conveying right for site, necessarily, would have effect of freezing R-1 in even attempting to put up a construction

— Thus, held, it is quite clear that parties contemplated a state of affairs which is completely inconsistent with and in clear collision with mandate of law — Illegality goes to root of matter — It is quite clear that plaintiff must rely upon illegal transaction and indeed relied upon same in filing suit for specific performance — Illegality is not trivial or venial — Therefore, contract in present case being patently illegal was unenforceable for reason that it clearly, both expressly and impliedly, would defeat object of the 1972 Rules, which are statutory in nature — Thus High Court clearly erred in holding that suit for specific performance was maintainable

— However having regard to entirety of evidence and conduct of parties, noticing even admitted stand of Defendant 2 that plaint scheduled property has a value of Rs 2.5 crores and plaintiff has paid, in all, a sum of Rs 50,000, which constituted consideration for agreement to sell several years ago, while suit for specific performance dismissed by Supreme Court, appellants directed to pay a sum of Rs 20,00,000 in place of specific performance of contract

— Government Grants, Largesse, Public Property and Public Premises — Particular Statutes/Norms/Rules/Orders — City of Bangalore Improvement (Allotment of Sites) Rules, 1972 — Rr. 18, 17, 8(1) and 7 — Contract and Specific Relief — Contract Act, 1872, S. 23

B. **Government Grants, Largesse, Public Property and Public Premises — City of Bangalore Improvement (Allotment of Sites) Rules, 1972 — R. 18 — Scope and Operation of — Explained in detail**

— R. 18(1) is to apply despite anything which is contained in 1972 Rules itself — That apart, it would operate, notwithstanding any other Rules, Bye-laws and orders, which may occupy field — Even an instrument executed in respect of any site allotted, rented or sold by Board for construction of buildings, will not detract from exercise of power — Power under R. 18, is vested with Chairman

— Scope of power is to execute a deed of conveyance — This is premised on request being made by allottee grantee or purchaser of site — R. 18(1) further contemplates that when power is invoked by Chairman under R. 18(1), restrictions, conditions and limitations mentioned in R. 18(2) will ipso facto apply — R. 18(2) divides categories into two — R. 18(2)(a) deals with situation where no building has been constructed on site — R. 18(2)(b) deals with situation where a building has been constructed on site

— In present case building on site has not been constructed, within meaning of the 1972 Rules — Thus, it may be indicated that condition that is imposed, includes obligation on part of purchaser to construct building on site, within period as may be specified by Board — Purchaser is visited with restriction that he shall not, without approval of Board, construct on site, any building other than building for which site was allotted, rented or sold — Purchaser, who is beneficiary of deed of conveyance in his favour under R. 18(1), is bound by further limitation or condition that purchaser shall not alienate site within a period of 10 yrs from date of allotment — Restriction against alienation, however, could not operate against a mortgage, as provided in R. 18(2)(a)(iii) — Mortgage is, however, to be one effected for purpose of construction of building on site — R. 18(2)(c) visits purchaser, committing breach of any of conditions in clause (a), inter alia, with resumption of site, no doubt, after a reasonable notice — R. 18(2)(c) further declares that all transactions entered into in contravention of conditions in clauses (a) and (b) are to be null and void ab initio — Transactions, which are referred to in R. 18(2)(c), are transactions which are referred to in R. 18(2)(a)(iii) or R. 18(2)(b)

C. **Government Grants, Largesse, Public Property and Public Premises — City of Bangalore Improvement (Allotment of Sites) Rules, 1972 — Rr. 18(1), 18(2), 17 and 7 — Effect of interplay of R. 17, terms of the lease-cum-sale agreement in present case, and provisions of R. 18(1) and R. 18(2) — Explained**

— By virtue of R. 7 allottee is treated as a lessee — He is obliged to observe conditions of lease-cum-sale agreement — He is obliged to pay rent, as provided in the Rules and also lease-cum-sale agreement — For a period of 10 yrs, allottee, who is also described as lessee and purchaser, cannot alienate site or building — Thus, in a case of allotment under R. 17, condition against alienation is to exist for a period of 10 yrs from date of allotment — In case of conveyance deed, which is executed in favour of allottee, condition against alienation will again operate for period of ten years from date of allotment — This is apart from other conditions viz. construction of building on site — In short, allottee becomes owner of site before expiry of 10 yrs upon power being invoked under R. 18(1) but assignment of rights, which would have been otherwise absolute, is subjected to conditions, as mentioned in R. 18(2)(a), which includes prohibition against alienation

D. **Government Grants, Largesse, Public Property and Public Premises — City of Bangalore Improvement (Allotment of Sites) Rules, 1972 — R. 18(3) — Scope and applicability of — Explained**

— R. 18(3) contemplates existence of either of conditions mentioned therein — They are: (1) lessee applies pointing out that for reason beyond his control, he is unable to reside in city of Bangalore; (2) by reason of his insolvency or impecuniosity, it has become necessary for him to sell site and/or site and building, if any, he may have put up thereon — R. 18(3) must be read along with R. 17

— While a person is a lessee (which means while he is an allottee), course open to an allottee/lessee, is to follow Rules and lease-cum-sale agreement and put up a residential building on site — He may be disabled by financial condition from fulfilling his promise under lease-cum-sale agreement and Rules to put up building — In either case i.e. when because of dire financial straits, he finds himself in, he can apply to Authority to permit him to sell the site, if no building has been put up or if he has put up a building on site, site along with building

— Courses of action open to BDA would be as follows: it may with previous approval of State Government, call upon applicant, when he has not put up building, to surrender site — Thus, in a case where a lessee/allottee wishes to sell site, Rules contemplate that site would have to be surrendered in favour of Authority — Rationale is, instead of permitting site being sold to any third party, site would go back to Authority, which in turn, will enable it to allot it to eligible persons waiting in queue — Where a building has been put up, again, R. 18(3)(b) contemplates that lessee can be permitted to sell vacant site and building — When lessee, on basis of his request that he may be permitted to sell site, has surrendered site to BDA, further consequence contemplated is that lessee will get back value of allotted site, which he has deposited under Rr. 17(1) and (2) — Over and above same, lessee is to be paid an additional sum equal to amount of interest @ 12% p.a.

E. **Government Grants, Largesse, Public Property and Public Premises — City of Bangalore Improvement (Allotment of Sites) Rules, 1972 — R. 18(3) — Expression "but without prejudice to the provisions of R. 17" — Meaning — Explained**

— R. 18(3) must be understood as a power with Board to be exercised with previous approval of State Government — Thus, an allottee, as a rule, is expected to hold up to promise he has made about his financial capacity to construct building — Consequences in R. 17 would remain alive

F. **Government Grants, Largesse, Public Property and Public Premises — City of Bangalore Improvement (Allotment of Sites) Rules, 1972 — R. 18(3) — Power to be exercised under — Manner in which to be exercised — Explained**

— Power under R. 18(3) is not meant to be a mechanical exercise of power — This can be discerned from requirement that "previous" approval of State Government is sine qua non for BDA exercising its power

G. **Doctrines and Maxims — Pari delicto potior est conditio defendentis — Applicability — Where both parties do not show that there was any conspiracy to defraud a third person or to commit any other illegal act, maxim, *in pari delicto*, held, cannot be made applicable — Contract Act, 1872, S. 23**

H. **Constitution of India — Art. 136 — Scope of Interference under — Conduct of parties and question as to whether interference would promote interests of justice, are relevant considerations**

I. **Limitation Act, 1963 — Art. 54 — Limitation period for suit for specific performance — Whether subject suit was premature and thus not maintainable — Determination of**

— There is no evidence to support projected apprehension that Defendant 1 was about to dispose of property — In fact, any such sale would have been completely illegal being prohibited by law as that is inevitable and necessary implication flowing from R. 18(3) of the 1972 Rules — There is absolutely no foundation for plaintiff to have instituted suit except perhaps repudiation — Hence, finding of High Court that suit for specific performance was not premature, not disturbed — Specific Relief Act, 1963, S. 9

J. **Contract and Specific Relief — Specific Relief Act, 1963 — S. 9 — Suit for specific performance of agreement to sell — Maintainability — Defendant vendor repudiated contract and plaintiff did not pray for a declaration that repudiation was bad — Held, plaintiff cannot be non-suited on this score in view of finding that agreement to sell cannot be enforced**

K. **Transfer of Property Act, 1882 — Ss. 52 and 3 — Lis pendens — Doctrine of — Applicability — Doctrine of notice/constructive — Whether relevant for applying S. 52 — Principles clarified**

— Sine qua non for doctrine of lis pendens to apply is that transfer is made or property is otherwise disposed of by a person, who is a party to litigation — Person/party, who finally succeeds in litigation, can ask court to ignore any transfer or other disposition of property by any party to proceeding — This is subject to condition that transfer or other disposition is made during pendency of lis

— In present case High Court in arriving at finding that transfer in favour of appellant was hit by lis pendens, took into consideration doctrine of notice/ constructive notice — However, held, doctrine of notice and constructive notice would be inapposite and inapplicable in present case — Neither the fact that transferee had no notice nor fact that transferee acted bona fide, in entering into transaction, are relevant for applying S. 52 to a transaction — This is unlike requirement of S. 19(1)(b) of the Specific Relief Act whereunder these requirements are relevant

— Contract and Specific Relief — Specific Relief Act, 1963, S. 19(b)

On 4-4-1979, the plaint scheduled property, which consisted of a site, was allotted to Defendant 1 (since deceased), by the Bangalore Development Authority ("BDA"). Based on the allotment, a lease-cum-sale agreement was entered into between BDA and Defendant 1 on 4-4-1979. Defendant 1 was put in possession on 14-5-1979. On 17-11-1982, Defendant 1 entered into the agreement with the plaintiff agreeing to execute the sale deed of the site within three months from the date on which the plaintiff obtained the sale deed from BDA. On 1-3-1983 and 26-4-1984, the plaintiff issued letters to Defendant 1, calling upon her to execute the sale deed. Defendant 1 issued letter dated 8-5-1984, intimating that the plaintiff was in breach. The agreement itself had lapsed and the advance amount by the

plaintiff was forfeited. After issuing notice on 14-2-1985, the plaintiff instituted the suit in question, seeking specific performance.

Defendant 1, after filing written statement on 14-8-1986, died pending the suit, on 18-7-1994. The plaintiff impleaded the husband of the defendant as Defendant 1(*a*). A sale deed came to be executed by BDA in favour of the son of Defendant 1 and Defendant 1(*a*), on 19-6-1996. Thereafter, the son executed sale deed of the plaint scheduled property in favour of Defendant 2.

The trial court did not decree the suit for specific performance but directed return of Rs 50,000 with 9% interest. The High Court found that the suit is maintainable. It was further found that Defendant 2 is not a bona fide purchaser for value without notice of the agreement to sell dated 17-11-1982. It was further found by the High Court that the alienation made in favour of Defendant 2 was hit by the provisions of Section 52 of the Transfer of Property Act, 1882 ("TPA"). Answering the point, whether the plaintiff was entitled to the relief of specific performance, it was found that, in the facts, when the entire sale consideration was paid by the plaintiff to Defendant 1, nothing more remained to be done by the plaintiff, and having found that Defendant 2 was not a bona fide purchaser for value without notice, and taking the view that Section 23 of the Specific Relief Act, 1963 did not apply at all and there being no reason to not exercise discretion in favour of the plaintiff, the suit was decreed by directing Defendant 1(*a*), Defendant 1(*b*) and Defendant 2 to jointly convey the plaint scheduled property to the plaintiff.

Thus the present appeals in the Supreme Court.

The defendant contended that there was clear prohibition against the alienation of the site or the plaint scheduled property for a period of ten years in view of Rule 18(2) of the City of Bangalore Improvement (Allotment of Sites) Rules, 1972 ("the 1972 Rules"). The very agreement relied upon by the plaintiff was unlawful, and therefore, the High Court could not have granted specific performance.

The issues for determination before the Supreme Court were:

(*i*) Whether the enforcement of the agreement to sell dated 17-11-1982, expressly or impliedly, lead to palpably defeat the object of the 1972 Rules which are statutory in nature?

(*ii*) What is the purport of Rule 18 of the 1972 Rules?

(*iii*) What is the effect of interplay of Rule 17 of the 1972 Rules, lease-cum-sale agreement and provisions of Rule 18(1) and Rule 18(2) of the 1972 Rules?

(*iv*) What is the scope of Rule 18(3) of the 1972 Rules?

(*v*) What is the meaning of the expression "but without prejudice to the provisions of Rule 17", in Rule 18(3) of the 1972 Rules?

(*vi*) Whether subject suit was premature and thus not maintainable in view of Article 54 of the Limitation Act, 1963?

(*vii*) Whether when defendant repudiated contract and plaintiff not prayed for a declaration that repudiation was bad, plaintiff could be non-suited on this score in spite of finding that agreement to sell cannot be enforced?

(*viii*) What is the condition for applying doctrine of lis pendens in view of Section 52 TPA?

Allowing the appeals, the Supreme Court

Held :

Rule 18 of the 1972 Rules begins with a non obstante clause as far as Rule 18(1) is concerned. Rule 18(1) of the 1972 Rules is to apply despite anything which is contained in the 1972 Rules itself. That apart, it would operate, notwithstanding any other Rules, Bye-laws and orders, which may occupy the field. Even an instrument executed in respect of any site allotted, rented or sold by the Board for the construction of buildings, will not detract from the exercise of power. The power, under Rule 18 of the 1972 Rules, is vested with the Chairman. The scope of the power is to execute a deed of conveyance. This is premised on the request being made by the allottee grantee or purchaser of the site. Rule 18(1) of the 1972 Rules further contemplates that when the power is invoked by the Chairman under Rule 18(1), the restrictions, conditions and limitations mentioned in Rule 18(2) of the 1972 Rules will ipso facto apply. (Paras 38 and 38.1)

Rule 18(2) of the 1972 Rules divides the categories into two. Rule 18(2)(*a*) deals with the situation where no building has been constructed on the site. Rule 18(2)(*b*) deals with the situation where a building has been constructed on the site. Since, the Supreme Court, in this case, is concerned with the case of a site on which the building has not been constructed, within the meaning of the 1972 Rules, it can be indicated that the condition that is imposed, includes the obligation on the part of the purchaser to construct the building on the site, within the period as may be specified by the Board. The purchaser is visited with the restriction that he shall not, without the approval of the Board, construct on the site, any building other than the building for which the site was allotted, rented or sold. The purchaser, who is the beneficiary of deed of conveyance in his favour under Rule 18(1) of the 1972 Rules, is bound by the further limitation or condition that the purchaser shall not alienate the site within a period of 10 years from the date of allotment. The restriction against alienation, however, could not operate against a mortgage, as provided in Rule 18(2)(*a*)(*iii*) of the 1972 Rules. The mortgage is, however, to be one effected for the purpose of construction of the building on the site. (Para 38.2)

What the 1972 Rules and agreement contemplate is, though the entire amount of the value of the site is payable within a period of 90 days or extended period under Rule 17(2) of the 1972 Rules, the allottee/lessee becomes the purchaser of the site, only when the conveyance deed is executed in his favour under Rule 17(7) of the 1972 Rules. During this period, the Rules and the agreement contemplate clearly that the allottee puts up the building for his residence but he cannot alienate the property during the period of 10 years, which is the period of tenancy, and this period of 10 years begins, from the time he is put into possession, based on the agreement. (Para 39.3)

Thus, in a case of allotment under Rule 17 of the 1972 Rules, the condition against alienation is to exist for a period of 10 years from the date of allotment. In the case of conveyance deed, which is executed in favour of the allottee, the condition against alienation will again operate for the period of ten years from the date of allotment. This is apart from the other conditions viz. construction of the building on the site. In short, the allottee becomes the owner of the site before the expiry of 10 years upon power being invoked under Rule 18(1) of the 1972

Rules but the assignment of the rights, which would have been otherwise absolute, is subjected to the conditions, as mentioned in Rule 18(2)(*a*) of the 1972 Rules, which includes the prohibition against the alienation. (Para 41)

The impact of Rule 18(3) of the 1972 Rules: This Rule was substituted w.e.f. 21-12-1976. The Rule contemplates two conditions for its operation. Firstly, it operates without prejudice to the provisions of Rule 17 of the 1972 Rules. Secondly, Rule 18(3) of the 1972 Rules applies, notwithstanding anything contained in Rule 18(2) of the 1972 Rules. Now, what is the exact scope of Rule 18(3) of the 1972 Rules is that it contemplates the existence of either of the conditions mentioned therein. They are: (1) the lessee applies pointing out that for reason beyond his control, he is unable to reside in the City of Bangalore; (2) by reason of his insolvency or impecuniosity, it has become necessary for him to sell the site and or site and the building, if any, he may have put up thereon. (Para 42)

Further Rule 18(3) of the 1972 Rules must be read along with Rule 17 of the 1972 Rules. (Para 43)

While a person is a lessee (which means while he is an allottee), the course open to an allottee/lessee, is to follow the 1972 Rules and lease-cum-sale agreement and put up a residential building on the site. He may be disabled by the financial condition from fulfilling his promise under the lease-cum-sale agreement and the 1972 Rules to put up the building. In either case i.e. when because of the dire financial straits he finds himself in, he can apply to the Authority to permit him to sell the site, if no building has been put up or if he has put up a building on the site, the site along with the building. (Para 43.1)

The courses of action open to BDA would be as follows: it may with the previous approval of the State Government, call upon the applicant, when he has not put up the building, to surrender the site. Thus, in a case where a lessee/allottee wishes to sell the site, the Rules contemplate that site would have to be surrendered in favour of the Authority. The rationale appears to be, instead of permitting the site being sold to any third party, the site would go back to the Authority, which in turn, will enable it to allot it to the eligible persons waiting in the queue. Where a building has been put up, again, Rule 18(3)(*b*) of the 1972 Rules contemplates that the lessee can be permitted to sell the vacant site and the building. When the lessee, on the basis of his request that he may be permitted to sell the site, has surrendered the site to BDA, the further consequence contemplated is that the lessee will get back the value of the allotted site, which he has deposited under Rules 17(1) and (2) of the 1972 Rules. Over and above the same, the lessee is to be paid an additional sum equal to the amount of interest @ 12% p.a. (Para 43.2)

The import of the expression "but without prejudice to the provisions of Rule 17" in Rule 18(3) of the 1972 Rules is as follows—under Rule 17 of the 1972 Rules, it is open to the Authority to cancel allotment and revoke the agreement and determine the lease. The allottee can be evicted from the site. The amount of 12½% of the value paid, under Rule 17(1) of the 1972 Rules can be forfeited. No doubt, the Board will refund the balance to the allottee. This is a consequence which is contemplated in Rule 17(6) of the 1972 Rules. This power with the Board is kept preserved when an allottee does not put up the building. Thus, Rule 18(3) of the 1972 Rules must be understood as a power with the Board to be exercised with the previous approval of the State Government. Thus, an allottee, as a rule,

is expected to hold up to the promise he has made about his financial capacity to construct the building. Consequences in Rule 17 of the 1972 Rules would remain alive. (Para 44)

The power under Rule 18(3) of the 1972 Rules is to encompass situations of insolvency or impecuniosity, which overtake an allottee after the allotment takes place. In other words, the unplanned and uncontemplated vicissitudes of life may visit him inter alia with insolvency or impecuniosity, leaving him with no other choice but to sell the site or even the site with the building. The fact that power under Rule 18(3) of the 1972 Rules is not meant to be a mechanical exercise of power, can be discerned from the requirement that "previous" approval of the State Government is the sine qua non for BDA exercising its power. (Para 45)

Where both parties do not show that there was any conspiracy to defraud a third person or to commit any other illegal act, the maxim, *in pari delicto*, etc. can hardly be made applicable. (Para 67)

Kedar Nath Motani v. *Prahlad Rai*, AIR 1960 SC 213 : (1960) 1 SCR 861, *considered*

In an agreement wherein the vendor agrees to convey property, which is permissible only with the permission of some Authority, the court can, in appropriate cases, grant relief. (Paras 68 to 75)

Kedar Nath Motani v. *Prahlad Rai*, AIR 1960 SC 213 : (1960) 1 SCR 861; *Holman* v. *Johnson*, (1775) 1 Cowp 341 : 98 ER 1120; *Palaniyappa Chettiar* v. *Chockalingam Chettiar*, 1920 SCC OnLine Mad 152 : ILR (1921) 44 Mad 334; *Bhola Nath* v. *Mul Chand*, 1903 SCC OnLine All 21 : ILR (1903) 25 All 639; *Sita Ram* v. *Radhabai*, AIR 1968 SC 534; *Narayanamma* v. *Govindappa*, (2019) 19 SCC 42 : (2020) 4 SCC (Civ) 363; *Immani Appa Rao* v. *Gollapalli Ramalingamurthi*, (1962) 3 SCR 739 : AIR 1962 SC 370, *considered*

Motilal v. *Nanhelal*, 1930 SCC OnLine PC 71 : AIR 1930 PC 287; *Vishwa Nath Sharma* v. *Shyam Shanker Goela*, (2007) 10 SCC 595; *Ferrodous Estates (P) Ltd.* v. *P. Gopirathnam*, 2020 SCC OnLine SC 825, *relied on*

P. Gopirathnam v. *Ferrodous Estate (P) Ltd.*, 2007 SCC OnLine Mad 101, *referred to*

When an agreement to sell is entered into, whereunder to complete the title of the vendor and for a sale to take place and the sale is not absolutely prohibited but a permission or approval from an Authority, is required, then, such a contract is, indeed, enforceable and would not attract the shadow of Section 23 of the Contract Act, 1872. (Para 77)

Whatever may be intention of the parties, a contract which is expressly or impliedly prohibited by a statute, may not be enforced by the court. (Paras 79 to 91)

T. Dase Gowda v. *D. Srinivasaiah*, 1990 SCC OnLine Kar 613; *K. Chandrashekar Hegde* v. *Bangalore City Corpn.*, 1987 SCC OnLine Kar 390 : ILR 1988 Kar 356; *Yogambika* v. *Narsingh*, 1992 SCC OnLine Kar 1 : ILR 1992 Kar 717; *Subbireddy* v. *K.N. Srinivasa Murthy*, 2005 SCC OnLine Kar 460 : AIR 2006 Kar 4; *Syed Zaheer* v. *C.V. Siddveerappa*, 2009 SCC OnLine Kar 601 : ILR 2010 Kar 765; *Balwant Vithal Kadam* v. *Sunil Baburaoi Kadam*, (2018) 2 SCC 82 : (2018) 1 SCC (Civ) 604; *Punjab & Sind Bank* v. *Punjab Breeders Ltd.*, (2016) 13 SCC 283 : (2017) 2 SCC (Civ) 433; *Suraj Lamp & Industries (P) Ltd. (2)* v. *State of Haryana*, (2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351; *Jambu Rao Satappa Kocheri* v. *Neminath Appayya Hanamannayar*, AIR 1968 SC 1358, *considered*

Motilal v. *Nanhelal*, 1930 SCC OnLine PC 71 : AIR 1930 PC 287, *referred to*

A contract may expressly or impliedly be prohibited by provisions of a law. The intentions of the parties do not salvage such a contract. What is involved in the present case, may not be a mere case of a conditional decree for specific performance being granted. The 1972 Rules contemplate a definite scheme. Land, which is acquired by the public authority, is meant to be utilised for the particular purpose. The object of the law is to invite applications from eligible persons, who are to be selected by a committee and the sites are allotted to those eligible persons, so that the chosen ones are enabled to put up structures, which are meant to be residential houses. (Paras 93 to 102)

Gherulal Parakh v. *Mahadeodas Maiya*, AIR 1959 SC 781; *Sobhag Singh* v. *Jai Singh*, AIR 1968 SC 1328, *relied on*

Bhagat Ram v. *Kishan*, (1985) 3 SCC 128, *considered*

Union of India v. *L.S.N. Murthy*, (2012) 1 SCC 718 : (2012) 1 SCC (Civ) 368, *clarified* and *distinguished*

Motilal v. *Nanhelal*, 1930 SCC OnLine PC 71 : AIR 1930 PC 287; *Ferrodous Estates (P) Ltd.* v. *P. Gopirathnam*, 2020 SCC OnLine SC 825, *referred to*

Jambu Rao Satappa Kocheri v. *Neminath Appayya Hanamannayar*, AIR 1968 SC 1358, *cited*

If the agreement between the plaintiff and Defendant 1 is taken as it is and it is enforced, the following would be the consequences. The allotment to Defendant 1 was made on 4-4-1979. In fact, the first defendant was obliged, in law, to construct a residential building within two years under Rule 17(6) of the 1972 Rules. No doubt, the time could be extended thereunder. But, at the time, the agreement dated 17-11-1982 was entered into, Defendant 1 was already in breach. (Para 106)

The agreement to sell between the parties in the present case contemplated giving a short shrift to the mandate of the law. This is clear from the fact that under the agreement, Defendant 1 was obliged to sell the site as it is. Construction of the building became a practical impossibility. The price, which was agreed upon, was qua the site alone. The consideration and the other terms of the agreement, in other words, ruled out the possibility of a residential building being constructed by Defendant 1, who as the allottee, was, under the law, obliged to construct the building. Assuming for a moment that the construction was put up, which assumption must be premised on possession not being handed over to the plaintiff and which is contrary, not only to the terms of the agreement, but also pleading of the plaintiff and the consistent stand in the evidence adduced on behalf of the plaintiff and even proceeding, however, on the basis that as found by the trial court, that the plaintiff has failed to establish that possession was handed over to him on the date of agreement and that the possession continued with the first defendant, the terms of the agreement, which included, the price being fixed for conveying the right for the site, necessarily, would have the effect of freezing Respondent 1 in even attempting to put up a construction. (Para 108.2)

Therefore, contention of the plaintiff that there was nothing, which could have prevented putting up a building is liable to be rejected. (Para 109)

Going by the recital in the agreement entered into between the plaintiff and Defendant 1, possession is handed over by Defendant 1 to the plaintiff. The original possession certificate is also said to be handed over to the plaintiff. The agreement, even according to the plaintiff, contemplated that within three months

of conveyance of the site in favour of Defendant 1, Defendant 1 was to convey her rights in the site to the plaintiff. It is quite clear that the parties contemplated a state of affairs which is completely inconsistent with and in clear collision with the mandate of the law. On its term, it stands out as an affront to the mandate of the law. (Para 110)

The illegality goes to the root of the matter. It is quite clear that the plaintiff must rely upon the illegal transaction and indeed relied upon the same in filing the suit for specific performance. The illegality is not trivial or venial. The illegality cannot be skirted nor got around. The plaintiff is confronted with it and he must face its consequences. If every allottee chosen after a process of selection under the rules with reference to certain objective criteria were to enter into bargains of this nature, it will undoubtedly make the law a hanging stock. (Para 111)

For reasons indicated above, on a conspectus of the scheme of the 1972 Rules, it can be held that the contract was unenforceable for reason that it clearly, both expressly and impliedly, would defeat the object of the 1972 Rules, which are statutory in nature. The contract was patently illegal for reasons already indicated. (Para 113)

Is the suit premature? Scope of Article 54 of the Limitation Act, 1963: There is absolutely no evidence to support the projected apprehension that Defendant 1 was about to dispose of the property. In fact, any such sale would have been completely illegal being prohibited by law as that is the inevitable and necessary implication flowing from Rule 18(3) of the 1972 Rules. There is absolutely no foundation for the plaintiff to have instituted the suit except perhaps the repudiation. (Para 116)

Hence, the finding of the High Court that suit for specific performance was not premature, is affirmed. (Paras 118 to 121)

Ramzan v. *Hussaini*, (1990) 1 SCC 104, *relied on*

Ahmadsahab Abdul Mulla (2) v. *Bibijan*, (2009) 5 SCC 462 : (2009) 2 SCC (Civ) 555, *considered*

Tarlok Singh v. *Vijay Kumar Sabharwal*, (1996) 8 SCC 367, *cited*

Impact of absence of prayer questioning repudiation by Defendant 1: Defendant 2 has raised a contention that since Defendant 1 has repudiated the contract and as the plaintiff has not prayed for a declaration that the repudiation was bad, the suit would not lie. In view of the finding by the Supreme Court that agreement dated 17-12-1982 should not be enforced, the plaintiff cannot be non-suited on this score. (Para 123)

I.S. Sikandar v. *K. Subramani*, (2013) 15 SCC 27 : (2014) 4 SCC (Civ) 365; *Mohinder Kaur* v. *Sant Paul Singh*, (2019) 9 SCC 358 : (2019) 4 SCC (Civ) 415, *considered*

Lis pendens: The doctrine of lis pendens is based on the maxim "*pendente lite nihil innovetur*". This means that pending litigation, nothing new should be introduced. Section 52 TPA, which incorporates the doctrine of lis pendens, is based on equity and public policy. It pours complete efficacy to the adjudicatory mechanism. (Para 126)

Bellamy v. *Sabine*, (1857) 1 De G & J 566 : 44 ER 842; *Faiyaz Husain Khan* v. *Munshi Prag Narain*, 1907 SCC OnLine PC 6 : (1906-07) 34 IA 102, *relied on*

The sine qua non for the doctrine of lis pendens to apply is that the transfer is made or the property is otherwise disposed of by a person, who is a party to the litigation. Thus, the person/party, who finally succeeds in the litigation, can ask the court to ignore any transfer or other disposition of property by any party to the proceeding. This is subject to the condition that transfer or other disposition is made during the pendency of the lis. (Para 129)

Manjeshwara Krishnaya v. *Vasudeva Mallya*, 1917 SCC OnLine Mad 141 : AIR 1918 Mad 578, *referred to*

The High Court has, in arriving at the finding that the transfer in favour of the appellant is hit by lis pendens, taken into consideration the doctrine of notice/constructive notice. However, the doctrine of notice and constructive notice would be inapposite and inapplicable in the present case. Neither the fact that the transferee had no notice nor the fact that the transferee acted bona fide, in entering into the transaction, are relevant for applying Section 52 to a transaction. This is unlike the requirement of Section 19(1)(*b*) of the Specific Relief Act, 1963 whereunder these requirements are relevant. (Paras 135 and 136)

Nallakumara Goundan v. *Pappayi Ammal*, 1944 SCC OnLine Mad 298 : AIR 1945 Mad 219, *distinguished*

Not a case warranting interference under Article 136 of the Constitution?: It is undoubtedly true that at both the stages, namely, while granting special leave and also even after special leave has been granted under Article 136 that is when the Supreme Court considers an appeal it would not be oblivious to the special nature of the jurisdiction it exercises. It is not axiomatic that on a case being made otherwise that the Supreme Court would interfere. The conduct of the parties and the question as to whether interference would promote the interests of justice are not irrelevant considerations. Being the final court, it is not without reason that the Supreme Court is accordingly also clothed with the extraordinary powers under Article 142 of the Constitution to do complete justice between the parties. (Para 149)

The upshot of the above discussion is that the High Court has clearly erred in holding that the suit was maintainable. The suit to enforce the agreement dated 17-11-1982 should not be countenanced by the court. (Para 154)

Having regard to the entirety of the evidence and the conduct of the parties, noticing even the admitted stand of Defendant 2 that the plaint scheduled property has a value of Rs 2.5 crores and the plaintiff has paid, in all, a sum of Rs 50,000, which constituted the consideration for the agreement to sell several years ago, the suit for specific performance is dismissed, the appellants are directed to pay a sum of Rs 20,00,000 in place of the decree of the trial court. (Para 156)

Y. Subba Raju v. *Jayalakshmamma*, 2016 SCC OnLine Kar 8982, *reversed*

RM-D/68737/SV

Advocates who appeared in this case :

Ms Kiran Suri, Senior Advocate [Ms Kirti Renu Mishra (Advocate-on-Record), S.J. Amith, Krishna Kumar and Dr (Ms) Vipin Gupta (Advocate-on-Record), Advocates], for the Appellant;

R. Basant, Senior Advocate [Ms Pritha Srikumar (Advocate-on-Record), Ms Mansi Binjrajka and Ms Kirti Renu Mishra (Advocate-on-Record), Advocates], for the Respondents.

Chronological list of cases cited ***on page(s)***

1. 2020 SCC OnLine SC 825, *Ferrodous Estates (P) Ltd.* v. *P. Gopirathnam* 366*a*, 373*g*
2. (2019) 19 SCC 42 : (2020) 4 SCC (Civ) 363, *Narayanamma* v. *Govindappa* 335*g*, 362*f-g*, 363*a*, 363*g*, 365*a*
3. (2019) 9 SCC 358 : (2019) 4 SCC (Civ) 415, *Mohinder Kaur* v. *Sant Paul Singh* 380*c*
4. (2018) 2 SCC 82 : (2018) 1 SCC (Civ) 604, *Balwant Vithal Kadam* v. *Sunil Baburaoi Kadam* 367*e-f*
5. (2016) 13 SCC 283 : (2017) 2 SCC (Civ) 433, *Punjab & Sind Bank* v. *Punjab Breeders Ltd.* 367*f*
6. 2016 SCC OnLine Kar 8982, *Y. Subba Raju* v. *Jayalakshmamma* **(reversed)** 334*c*, 381*g*, 382*g*, 388*f-g*, 389*d*, 389*d-e*, 389*f*
7. (2013) 15 SCC 27 : (2014) 4 SCC (Civ) 365, *I.S. Sikandar* v. *K. Subramani* 379*g*, 380*a*
8. (2012) 1 SCC 718 : (2012) 1 SCC (Civ) 368, *Union of India* v. *L.S.N. Murthy* 371*g*
9. (2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351, *Suraj Lamp & Industries (P) Ltd. (2)* v. *State of Haryana* 368*a*
10. (2009) 5 SCC 462 : (2009) 2 SCC (Civ) 555, *Ahmadsahab Abdul Mulla (2)* v. *Bibijan* 378*e*, 378*e-f*, 379*c*
11. 2009 SCC OnLine Kar 601 : ILR 2010 Kar 765, *Syed Zaheer* v. *C.V. Siddveerappa* 367*d-e*
12. (2007) 10 SCC 595, *Vishwa Nath Sharma* v. *Shyam Shanker Goela* 365*g*
13. 2007 SCC OnLine Mad 101, *P. Gopirathnam* v. *Ferrodous Estate (P) Ltd.* 366*a-b*
14. 2005 SCC OnLine Kar 460 : AIR 2006 Kar 4, *Subbireddy* v. *K.N. Srinivasa Murthy* 367*c-d*
15. (1996) 8 SCC 367, *Tarlok Singh* v. *Vijay Kumar Sabharwal* 378*f*, 379*a*
16. 1992 SCC OnLine Kar 1 : ILR 1992 Kar 717, *Yogambika* v. *Narsingh* 367*b-c*
17. (1990) 1 SCC 104, *Ramzan* v. *Hussaini* 378*d*, 378*e-f*, 378*f-g*, 379*a*, 379*c*
18. 1990 SCC OnLine Kar 613, *T. Dase Gowda* v. *D. Srinivasaiah* 366*d-e*, 367*a*, 367*b-c*, 368*c*, 377*c*
19. 1987 SCC OnLine Kar 390 : ILR 1988 Kar 356, *K. Chandrashekar Hegde* v. *Bangalore City Corpn.* 367*a*, 368*a-b*
20. (1985) 3 SCC 128, *Bhagat Ram* v. *Kishan* 371*a*, 371*c*
21. AIR 1968 SC 1358, *Jambu Rao Satappa Kocheri* v. *Neminath Appayya Hanamannayar* 368*c-d*, 369*a-b*, 369*b-c*, 370*e-f*, 371*e*, 372*c*
22. AIR 1968 SC 1328, *Sobhag Singh* v. *Jai Singh* 373*f-g*
23. AIR 1968 SC 534, *Sita Ram* v. *Radhabai* 362*d*
24. (1962) 3 SCR 739 : AIR 1962 SC 370, *Immani Appa Rao* v. *Gollapalli Ramalingamurthi* 364*f*, 364*f-g*, 365*a*, 365*a-b*, 365*b-c*
25. AIR 1960 SC 213 : (1960) 1 SCR 861, *Kedar Nath Motani* v. *Prahlad Rai* 335*g*, 360*g*, 361*a*, 362*a-b*, 363*a*, 363*a-b*, 364*d*
26. AIR 1959 SC 781, *Gherulal Parakh* v. *Mahadeodas Maiya* 373*a-b*, 373*d-e*
27. 1944 SCC OnLine Mad 298 : AIR 1945 Mad 219, *Nallakumara Goundan* v. *Pappayi Ammal* 383*f-g*, 383*g*, 384*d-e*
28. 1930 SCC OnLine PC 71 : AIR 1930 PC 287, *Motilal* v. *Nanhelal* 365*c-d*, 367*c*, 373*g*

29. 1920 SCC OnLine Mad 152 : ILR (1921) 44 Mad 334, *Palaniyappa Chettiar* v. *Chockalingam Chettiar* 362*a*
30. 1917 SCC OnLine Mad 141 : AIR 1918 Mad 578, *Manjeshwara Krishnaya* v. *Vasudeva Mallya* 381*c-d*
31. 1907 SCC OnLine PC 6 : (1906-07) 34 IA 102, *Faiyaz Husain Khan* v. *Munshi Prag Narain* 380*e-f*
32. 1903 SCC OnLine All 21 : ILR (1903) 25 All 639, *Bhola Nath* v. *Mul Chand* 362*a*
33. (1857) 1 De G & J 566 : 44 ER 842, *Bellamy* v. *Sabine* 380*e*
34. (1775) 1 Cowp 341 : 98 ER 1120, *Holman* v. *Johnson* 361*a*, 361*a-b*

The Judgment of the Court was delivered by

K.M. JOSEPH, J.— Leave granted. The appellants are Defendant 1(*a*), Defendant 1(*b*) and second defendant in a suit filed for specific performance. Defendant 1(*a*) and Defendant 1(*b*) have filed SLP (C) No. 6858 of 2017 while Defendant 2 has filed SLP (C) No. 6857 of 2017. The trial court while refusing specific performance, directed the return of the amount paid by the plaintiff under the contract. By the impugned judgment[1], the High Court allowed the plaintiffs' appeal and directed the appellants to execute the sale deed relating to the plaint scheduled property in favour of the plaintiffs (legal representatives of original plaintiff). The parties will be hereinafter referred to by their status in the trial court.

A brief overview of facts

2. On 4-4-1979, the plaint scheduled property, which consisted of a site, was allotted to the first defendant (since deceased), by the Bangalore Development Authority (hereinafter referred to as "BDA"). Based on the allotment, a lease-cum-sale agreement was entered into between BDA and the first defendant on 4-4-1979. The first defendant was put in possession on 14-5-1979. On 17-11-1982, the first defendant entered into the agreement with the plaintiff agreeing to execute the sale deed of the site within three months from the date on which, the plaintiff obtained the sale deed from BDA. On 1-3-1983 and 26-4-1984, the plaintiff issued letters to the first defendant, calling upon her to execute the sale deed. The first defendant issued letter dated 8-5-1984, intimating that the plaintiff was in breach. The agreement itself had lapsed and the advance amount by the plaintiff was forfeited. After issuing notice on 14-2-1985, the plaintiff instituted the suit in question, seeking specific performance.

3. The first defendant, after filing written statement on 14-8-1986, died pending the suit, on 18-7-1994. The plaintiff impleaded the husband of the defendant as Defendant 1(*a*). A sale deed came to be executed by BDA in favour of the son of Defendant 1 and Defendant 1(*a*), on 19-6-1996. Thereafter, the son executed sale deed of the plaint scheduled property in favour of the second defendant. It is further not in dispute that the son of the first defendant and Defendant 1(*a*) was impleaded as Defendant 1(*b*) in the suit in the year 1997. The second defendant came to be impleaded as second defendant in the suit in the year 1997. Both Defendant 1(*b*) and the second defendant filed written statements.

1 *Y. Subba Raju* v. *Jayalakshmamma*, 2016 SCC OnLine Kar 8982

4. The trial court did not decree the suit for specific performance but directed return of Rs 50,000 with 9% interest. The High Court found that the suit is maintainable. It was further found that the second defendant is not a bona fide purchaser for value without notice of the agreement to sell dated 17-11-1982. It was further found by the High Court that the alienation made in favour of the second defendant, was hit by the provisions of Section 52 of the Transfer of Property Act, 1882. Answering the point, whether the plaintiff was entitled to the relief of specific performance, it was found that, in the facts, when the entire sale consideration was paid by the plaintiff to the first defendant, nothing more remained to be done by the plaintiff, and having found that the second defendant was not a bona fide purchaser for value without notice, and taking the view that Section 23 of the Specific Relief Act, 1963 did not apply at all and there being no reason to not exercise discretion in favour of the plaintiff, the suit was decreed by directing Defendant 1(*a*), Defendant 1(*b*) and the second defendant to jointly convey the plaint scheduled property to the plaintiff.

5. We heard Smt Kiran Suri, learned Senior Counsel on behalf of the second defendant and Shri R. Basant, learned Senior Counsel on behalf of the plaintiff. Mrs Kirti Renu Mishra, AoR, appears in the appeal filed by Defendant 1(*a*) and Defendant 1(*b*).

The contentions of the appellants

6. Smt Kiran Suri, learned Senior Counsel appearing on behalf of the second defendant contended that the finding that the suit was maintainable, was unsustainable. She contended that an agreement must be lawful, in order that a court may grant specific relief. It is her contention that the agreement is unlawful, being opposed to public policy, and also as it was a bargain, which would defeat the provisions of the law in question, within the meaning of Section 23 of the Contract Act, 1872.

7. The Senior Counsel invited our attention to the terms of the lease-cum-sale agreement entered into between the first defendant and BDA. She pointed out that there was clear prohibition against the alienation of the site or the plaint scheduled property for a period of ten years. She drew support from the City of Bangalore Improvement (Allotment of Sites) Rules, 1972 (hereinafter referred to as "the Rules"). She pointed out that the Court has erred in not noticing that Rule 18(2) proclaims an embargo against alienation for a period of ten years. The very agreement relied upon by the plaintiff was unlawful, and therefore, the Court could not have granted specific performance. She drew support from the judgment of this Court in *Kedar Nath Motani* v. *Prahlad Rai*[2] and *Narayanamma* v. *Govindappa*[3].

8. The Senior Counsel further contended that the suit itself, besides being not maintainable, was premature. She elaborated and contended that, what the agreement between the plaintiff and the first defendant contemplated, was that,

2 AIR 1960 SC 213 : (1960) 1 SCR 861
3 (2019) 19 SCC 42 : (2020) 4 SCC (Civ) 363

the first defendant would execute the sale deed in favour of the plaintiff upon the expiry of three months from the date of conveyance of sale deed executed by BDA. The agreement of lease-cum-sale contemplated such a conveyance in favour of the first defendant only after the expiry of ten years from the date of allotment and the date of the lease-cum-sale agreement dated 4-4-1979. The suit is filed a good four years prior to even the expiry of ten years.

9. The Senior Counsel attacked the finding of the High Court that the second defendant was not a bona fide purchaser for value. She pointed out that as far as knowledge of pendency of suit is concerned, the evidence pointed to the second defendant not being aware of the suit, Defendant 1(*b*) has admitted to not disclosing about the pendency of the suit to the second defendant. The second defendant inspected the site and found it to be a vacant land except for a small shed. Regarding the finding of the High Court that the original document, evidencing delivery of possession of the plaint scheduled property by BDA to the first defendant, was not given to the second defendant and that only a photocopy was given, it is contended that the second defendant was informed that the original was lost. There was already an assignment in favour of Defendant 1(*b*). There was no need for the second defendant to make any further inquiry. All possible inquiry was conducted by the second defendant. There is no justification for the High Court to conclude that the second defendant was not a bona fide purchaser for value. As far as finding of the High Court that the second defendant, a 20-year-old, at the time of the sale, did not have the wherewithal to purchase the property, it could not be justified, having regard to the evidence which established that the second defendant was the owner of 10 acres of land. He was into the business of selling milk and he had the necessary funds and there is no occasion for the High Court to interfere with the findings of the trial court in this regard.

10. Per contra, Shri R. Basant, learned Senior Counsel for the plaintiff, reminded us that the matter is appreciated by the two courts. The finding that there was a valid contract by the trial court was not challenged by the appellants. There is no pleading to justify the argument that the agreement in question was not lawful. He would point out that neither the lease-cum-sale agreement nor the Rules, prohibited the allotee entering into an agreement to sell the site. He pointed out that the rule, which is relevant to the fact, is Rule 17. Even Rule 18, relied upon by the appellants, did not stand in the way of the agreement to sell or the sale in favour of the plaintiff. He also emphasised that it does not lie in the mouth of the appellants to invoke the proposition that agreement in question was unlawful.

11. The learned Senior Counsel pointed to the findings of the High Court that by his conduct there was complete absence of bona fides in the claim. He pointed out that as correctly found by the High Court, the doctrine of lis pendens, applies. He further submitted that, at any rate, if the Court found that lis pendens did not apply, the fact that the second defendant has not been found to be a bona fide purchaser for value, was sufficient for this Court to decline to interfere, particularly, in a jurisdiction, which originates from the grant of

special leave under Article 136 of the Constitution of India. He would refute the contention that the suit was not maintainable and further that it was premature. He would point out that confronted with the definite stand of the first defendant, who he points out was the wife of an MLA and also a Minister, and having regard to Article 54 of the Limitation Act, 1963, had no choice, except to rush to the civil court and institute the suit.

12. The learned Senior Counsel would rely upon large body of case law, including judgments of the High Court of Karnataka, to contend that an agreement to sell, in circumstances, such as obtaining in the present case, was valid and lawful. He would command for our acceptance, the findings of the High Court regarding the fact that the second defendant was not a bona fide purchaser for value. He did not have the necessary capacity and he was fully aware of the pendency of the suit.

The law in question

13. The City of Bangalore Improvement Act, 1945, going by the Preamble, was enacted for the improvement of the City of Bangalore and to provide space for its future expansion. It contemplated the appointment of a Board of Trustees, which was to consist of eleven trustees with the Chairman and six trustees being appointed by the Government. The Act clothed the Board with the power to undertake improvement schemes. What is of relevance to the present case are the following provisions.

14. Section 24 read as follows:

> "**24.** ***Board not to sell or otherwise dispose of sites in certain cases***.— The Board shall not sell or otherwise dispose of any sites for the purpose of constructing buildings thereon for the accommodation of person until all the improvements specified in Section 23 have been substantially provided for the estimates."

15. Section 29 dealt with the power of the Board to acquire, hold and dispose of the property and it reads as follows:

> "**29.** ***Power of Board to acquire, hold and dispose of property***.—(1) The Board shall, for the purposes of this Act, have power to acquire and hold movable and immovable property, whether within or outside the city.
>
> (2) Subject to such restrictions, conditions and limitations as may be prescribed by rules made by the Government, the Board shall have power or lease, sell or otherwise transfer any movable or immovable property which belongs to it, and to appropriate or apply any land vested in or acquire by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any improvement scheme.
>
> (3) The restrictions, conditions and limitations contained in any grant or other transfer of any immovable property of any interest therein made by the Board shall notwithstanding anything contained in the Transfer of Property Act, 1882 (Central Act 4 of 1882) or any other law have effect according to their tenor."

16. Section 42 conferred power to make rules. The following provisions are relevant for the purpose of this case:

"**42.** ***Power of Government to make rules***.—The Government may, from time to time, make rules, not inconsistent with this Act—

* * *

(*aa*) regulating the allotment or sale by auction of sites by Board;

(*ab*) specifying the conditions, restrictions and limitations subject to which the Board may sell, lease or otherwise transfer movable or immovable property;"

17. Initially, bye-laws regulating the allotment of sites were published on 8-1-1954. These bye-laws came to be cancelled upon enactment of City of Bangalore Allotment of Site Rules, 1964. Thereafter, the City of Bangalore Improvement Disposal of Site Rules, 1971 came to be enacted. The said Rules came to be repealed with the making of the City of Bangalore Improvement (Allotment of Site) Rules, 1972. These Rules came into force on the 1st day of September, 1972. These Rules are the Rules, which would govern the fate of this case.

18. Rule 2(*b*) defines the word "allottee" as meaning the person to whom the site is allotted under these Rules. The Rules define "backward class". It also, inter alia, defines "stray site".

19. Rule 3 reads as follows:

"**3.** ***Offer of sites for allotment***.—(1) Whenever the Board has formed an extension or layout in pursuance of any scheme, the Board may, subject to the general or special orders of the Government, offer any or all the sites in such extension or layout for allotment to persons eligible for allotment of sites under these Rules.

(2) Due publicity shall be given in respect of the sites for allotment specifying their location, number, the amount payable as earnest money, the last date for submission of applications and such other particulars as the Chairman may consider necessary; by affixing a notice to the notice board of the office of the Board, and any other office as the Chairman may decide from time to time and by publication in not less than three daily newspapers published in the city of Bangalore in English and Kannada having a wide circulation in the city."

20. Rule 5 dealt with the allotment of stray sites. Rules 6 contemplated disposal of sites for heritable purposes.

21. Rule 7 proclaimed that the allottee was to be lessee and it reads as follows:

"**7.** ***Allottee to be a lessee***.—The site allotted under Rule 3 or Rule 5 shall be deemed to have been leased to the allottee until the lease is determined or the site is conveyed in the name of the allottee in accordance with these Rules. During the period of the lease, the allottee shall pay to the Board rent at the rate of rupees three per annum where the area of the site does not exceed two hundred square metres, rupees six per annum where the area of the site exceeds

two hundred square metres but does not exceed five hundred square metres and rupees twelve per annum where the area of the site exceeds five hundred square metres before the commencement of each year."

22. Rule 8 dealt with applications. It contemplated that the applications for allotment of site were to be in Form I. Several details are to be furnished. It included the annual income of the applicant, whether the applicant already owned a house or house site in the city, outside the city and whether he had any share in such property and the value of the share. It further included the query as to whether the applicant's wife/husband/minor child, owned a house or house site inside or outside the city.

23. Since, it may be relevant to the decision at hand, we may advert to the Form:

"**FORM I**

[*See* sub-rule (1) of Rule 8]

Form of Application for Purchase of Site

To

The Chairman,

City Improvement Trust Board,

Bangalore 20

Sir,

I wish to purchase a building site measuring …… in …… Extension, Bangalore. I agree to abide by the conditions of allotment and sale of the site contained in Rule 17 of the City of Bangalore Improvement (Allotment of Sites) Rules, 1972, and the terms of the lease-cum-sale agreement; copies of which are enclosed in duplicate. I also enclose the duplicate copies of the conditions of allotment and sale and lease-cum-sale agreement duly signed in token of having accepted the conditions therein.

Particulars about me are given below—

1. Name (in Block letters)

2. Father's/Husband's name

3. Age

4. Whether the applicant belongs to Scheduled Caste or Scheduled Tribe, Nomadic Tribes, Semi-Nomadic Tribes, Backward Classes, Denotified Tribes.

5. Whether married or single

6. (*a*) Residential address: Permanent (House No. Name of street, locality and town):

(*b*) Present address: (if different from above) for correspondence with the Board.

7. (*i*) Occupation or post.

(*ii*) Address

(*iii)* Place of employment or business.

8. (*a*) Annual income of the applicant (both from profession and from properties if any)

(*b*) Any other means indicating the capacity of the applicant to purchase the site applied for and to building a house thereon.

9. Whether the applicant is ordinarily a resident in Bangalore City or in the area under the jurisdiction of the Board and the period of such residence.

10. Whether any member of the family of which the applicant is a member owns or has been allotted site or a house by the Board or any other authority, within the area under the jurisdiction of the Board. (Furnish details).

11. (1) Whether the applicant already owns a house or a house-site:

(*a*) in the city (with details)

(*b*) outside the city (with details)

(2) Whether he/she has any share in such property and the value of the share thereof.

12. (1) Whether the applicant's wife/husband/minor child owns a house or a house-site:

(*a*) in the city (with details)

(*b*) outside the city (with details)

(2) Whether the applicant's wife/husband/minor child has any share in such property and the value of the share thereof.

13. Whether the applicant has transferred the ownership or rights in the house or house-site already allotted to him/her in any of the schemes of the Board or any other authority to somebody else (if so, furnish details).

14. Whether the applicant or any members or his/her family has already availed of any housing or loan scheme of Government, local body or Cooperative Society, if so, give details.

15. Whether the applicants applied for allotment of a site or a site with a building, in any of the scheme of the Board or and other authority and whether his/her deposit was refund (if so, furnish details).

16. Amount of earnest money deposited now (with Challan No. and date).

I hereby solemnly declare that all the above information given by me is true. I shall furnish any additional information in my possession which you may require. If there is any delay on my part to furnish the necessary information required by the Board, it will be within the discretion of the Board to reject my application.

If, at any time it is found that the information given by me above is incorrect, the Board can cancel the allotment, resume possession of the site and forfeit part or whole of the amount paid by me till then towards cost of the site or deposit.

I am aware that under the Rules, I have to build the house myself with my own resources.

Signature of Applicant

Station .....

Date .....

Attested: Magistrate of the First Class

Date ....."

24. Rule 10 dealt with the issue of eligibility for allotment and it reads as follows:

"**10.** ***Eligibility for allotment***.—No person—

(1) Who is not ordinarily resident (living independently or with his family members) in the area within the jurisdiction of the Board for not less than five years immediately before the last date fixed for making applications:

Provided that the persons who are domiciled in the State of Karnataka but serving in the Armed Forces of the Union outside the State of Karnataka shall be eligible for allotment of sites under these Rules.

(2) Who or any member of whose family owns or is a lessee entitled to demand conveyance eventually or has been allotted a site or a house by the Board or any other authority, within the area under the jurisdiction of the Board; or of the Corporation of the City of Bangalore, shall be eligible to apply for allotment of a site:

Provided that the Board may relax the restriction in clause (1) regarding residence in the case of persons—

(*i*) who are domiciled in the State of Mysore and who bona fide intend to reside within the area under the jurisdiction of the Board; or,

(*ii*) who are domiciled in the State of Mysore but have gone outside the State on business, employment, study or training and who bona fide intend to reside within the area under the jurisdiction of the board;

or

(*iii*) who though not domiciled in the State of Mysore bona fide intend to reside within the area under the jurisdiction of the Board."

25. Rule 11 provided for the principles for selection of applicants for allotment of sites. The following principles have been set out in Rule 11(1):

"**11.** ***Principles for selection of applicants for allotment of sites***.—(1) The Board shall consider the case of each applicant on its merits and shall have regard to the following principles in making selection—

(*i*) the status of the applicant, that is whether he is married or single and has dependent children;

(*ii*) the income of the applicant and his capacity to purchase a site and build a house thereon for his residence:

Provided that this condition shall not be considered in case of applicants belonging to Scheduled Castes, Scheduled Tribes, Wandering Tribes, Nomadic Tribes and other Backward Classes.

(*iii*) the number of years the applicant has been waiting for allotment of a site and the fact that he did not secure a site earlier though he is eligible and had applied for a site;

(*iv*) persons who are ex-servicemen or members of the family of the deceased servicemen killed in action, during the last ten years."

26. The sites were to be allotted among different classes of persons which included wandering tribes, Scheduled Tribes, Scheduled Castes, ex-servicemen, persons domiciled in Karnataka but serving in the Armed Forces of the Union outside the State, State Government servants, Central Government servants and servants of Corporation. 51% was reserved, in other words, in specific percentage terms for these categories. 51% was made available for the general public. Non-availability of applicants was also dealt with.

27. Rule 13 provided for selection of an applicant. The Board was empowered to reject any application without assigning any reason.

28. Rule 17 provides for conditions of allotment. Since, much turns on the impact of this Rule, we would refer to the same:

"**17.** ***Conditions of allotment and sale of site***.—The allotment of a site under these Rules shall be subject to the following conditions—

(1) The allottee shall within a period of fifteen days from the date of receipt of the notice of allotment, pay to the Board twelve-and-a-half per cent of the price of the site and if no such payment is made the allottee shall be deemed to have declined the allotment.

(2) The balance of the value of the site (less than a sum of rupees thirty where the area of the site does not exceed two hundred square metres, rupees sixty where the area exceeds two hundred square metres and does not exceed five hundred square metres and rupees one hundred and twenty where the area exceeds five hundred square metres) shall be paid within ninety days from the date of receipt of the notice of allotment, or such extended period not exceeding one year as the Chairman may specify. Interest at fifteen per cent shall be paid on the said amount for the extended period. If the said amount is not paid within the period of ninety days or the extended period the earnest money paid by the allottee shall be liable to forfeiture and the allotment may be cancelled:

Provided that where an allottee is a person—

(*i*) whose annual income does not exceed three thousand and six hundred rupees, he may choose to pay the balance value of the site in quarterly, half yearly or annual instalments and the rate of interest on the said amount for the extended period for quarterly payment will be two per cent for half yearly payments will be three per cent and annual payments four per cent;

(*ii*) whose annual income exceeds three thousand and six hundred rupees but does not exceed seven thousand and two hundred rupees interest at twelve per cent per annum shall be paid on the said amount for the extended period:

Provided further that where an allottee is a person belonging to a Scheduled Caste or Scheduled Tribe or other Backward Classes or a nomadic tribe or a wandering tribe, or a denotified tribe or a family of Defence personnel killed or disabled during the recent war and whose annual income from all sources does not exceed rupees five thousand, the balance of the value of the site required to be paid under this sub-rule shall be paid by him without interest within a period of six years from the date of receipt of the notice of allotment.

(3) Until the site is conveyed to the allottee the amount paid by the allottee for the purchase of the site shall be held by the Board as security deposit for the due performance of the terms and conditions of the allotment and the lease-cum-sale agreement entered into between the Board and the allottee.

(4) After payment under sub-rule (2) is made the Board shall intimate the allottee the actual measurements of the site and the particulars thereof and a lease-cum-sale agreement in Form II shall thereafter be executed by the allottee and the Board and registered by the allottee. If the agreement is not executed within forty-five days after the Board has intimated the actual measurements and particulars of the site to the allottee, the earnest money paid by the allottee may be forfeited, the allotment of the site may be cancelled, and the amount paid by the allottee after deducting the earnest money refunded to him. Every allottee shall construct a building on the site in accordance with the plans and designs approved by the Board. If in any case it is considered necessary to add any additional conditions in the agreement the Board may make such additions. Approval of the City of Bangalore Municipal Corporation for the plans and designs shall be necessary when the layout in which the site is situated is transferred to the control of the said Corporation.

(5) The allottee shall comply with the conditions of the agreement executed by him and the buildings and other Bye-laws of the Board or the Corporation, as the case may be, for the time being in force.

(6) The allottee shall construct a building within a period of two years from the date of execution of the agreement or such extended period as the Chairman may in any specified case by written order permit. If the building is not constructed within the said period the allotment may, after reasonable notice to the allottee, be cancelled, the agreement revoked, the lease determined and the allottee evicted from the site by the Board, and after forfeiting twelve-and-a-half per cent of the value of the site paid by the allottee, the Board shall refund the balance to the allottee.

(7)(*a*) On the expiry of the period of ten years and if the allotment has not been cancelled or the lease has not been determined in accordance with these Rules or the terms of the agreement in the meanwhile the Board shall by notice call upon the allottee to get the sale deed of the site executed at his own cost within the time specified in the said notice.

(*b*) If the allottee fails to get the sale deed executed within the time so specified the Board shall itself execute the same and recover the cost and other charges, if any, incidental thereto from the allottee as if the same are amount due to the Board.

(8) The allottee shall ordinarily reside or himself make use of the building constructed on the site allotted to him.

(9) With effect from the date of taking possession of the site the allottee or his heirs and successors shall be liable to pay the taxes, fees and cesses payable in respect of the site and any building erected thereon.

(10) If the particulars furnished by the applicant in the prescribed application form for allotment of site are found incorrect or false subsequently, twelve-and-half per cent of the site value, shall be forfeited after the site is resumed by the Board and the balance amount of site value refunded to the applicant."

29. Rule 18, likewise, speaks about restrictions, conditions and limitations on sale of sites and we refer to the same:

"**18.** ***Restrictions, conditions and limitation on sales of sites***.—(1) Notwithstanding anything contained in—

(*i*) these Rules or any other rules, Bye-laws or orders governing the allotment, grant or sale of sites by the Board for construction of buildings; or

(*ii*) any instrument executed in respect of any site allotted, granted or sold by the Board for construction of buildings,

the Chairman may at the request of the allottee, grantee or purchaser of a site, execute a deed of conveyance subject to the restrictions, conditions and limitations specified in sub-rule (2).

(2) The conveyance by the Chairman of a site in favour of an allottee, grantee or purchaser of a site (hereinafter referred to as "the purchaser") shall be subject to the following restrictions, conditions and limitations, namely—

(*a*) in the case of a site on which a building has not been constructed—

(*i*) the purchaser shall construct a building on the site within such period as may be specified by the Board, as per plans, designs and conditions to be approved by the Board or in conformity with the provisions of the City of Bangalore Municipal Corporation Act, 1949 and the Bye-laws made thereunder;

(*ii*) the purchaser shall not without the approval of the Board, construct on the site any building other than a building for the construction of which the site was allotted, granted or sold;

(*iii*) the purchaser shall not alienate the site within a period of ten years from the date of allotment except by mortgage in favour of the Government of India, the Government of Mysore, the Life Insurance Corporation of India or the Mysore Housing Board, or any company or Cooperative society approved by the Board or any

Corporation set up, owned or controlled by the State Government or the Central Government to secure moneys advanced by such Government, Corporation, Board, Company, Society or Corporations, as the case may be, for the construction of the building on the site;

(*b*) in the case of a site on which a building has been constructed, the purchaser shall not alienate the site and the building constructed thereon within a period of ten years from the date of allotment, except—

(*i*) by mortgage in favour of the Government of India, the Government of Mysore, the Life Insurance Corporation of India or the Mysore Housing Board or any Cooperative Society approved by the Board to secure moneys advanced by such Government, Corporation, Board, Company or Society for the construction of the building on the site; or

(*ii*) with the previous approval of the Board;

(*c*) in the event of the purchaser committing breach of any of the conditions in clause (*a*) or clause (*b*), the Board may at any time, after giving the purchaser reasonable notice, resume the site free from all encumbrances. The purchaser may remove all things which he has attached to the earth:

Provided he leaves the site in the state in which he received it. All transaction entered into in contravention of the conditions specified in clauses (*a*) and (*b*) shall be null and void *ab initio*.

Explanation.—In this Rule, references to the Board shall be deemed to include the Chairman when authorised by the Board by a general resolution to exercise any power vested in the Board.

(3) Notwithstanding anything in sub-rule (2), but without prejudice to the provisions of Rule 17 where the lessee applies that for reasons beyond his control he is unable to reside in the City of Bangalore or by reasons of his insolvency or impecuniosity it is necessary for him to sell the site or site and the building, if any, he may have put up thereon, the Bangalore Development Authority may, with the previous approval of the State Government, either—

(*a*) require him to surrender the site, where there is no building, in its favour; or

(*b*) where there is a building put up, permit him to sell the vacant site and building:

Provided that—

(*i*) in case covered by clause (*a*), the Bangalore Development Authority shall pay to the lessee the allotted value of the site and an additional sum equal to the amount of interest at twelve per cent per annum thereon; and

(*ii*) in cases covered by clause (*b*), the lessee shall pay to the Bangalore Development Authority a sum equal to the amount of interest at twelve per cent per annum on the allotted value of the site."

30. Rule 19 dealt with voluntary surrender and it read as follows:

> "**19.** ***Voluntary surrender***.—An allottee may at any time after allotment, surrender the site allotted to him to the Board. On such surrender the Board shall refund all amounts paid by the allottee to the Board in respect of the said site."

31. The Rules did not apply to disposal of corner sites and commercial sites.

32. We may notice in fact that the City of Bangalore Improvement Act, 1945 came to be repealed by the Bangalore Development Authority Act, 1976. There were certain amendments carried out to the 1972 Rules which need not detain us.

The purport of the above law

33. It is clear that what is involved is the allotment of public property. The allottee was to be a lessee. The allottee, during the period of lease, was to pay rent, as provided in Rule 7. Allotment was premised on selection being carried out based on principles for selection, as provided in Rule 11 and to be carried out by the Allotment Committee under Rule 12. The value of the site is fixed. This is clear from Rule 17(1).

34. The allottee was to pay 12½% of the price of the site within 15 days of the receipt of notice of allotment. Within 90 days from the date of receipt of notice of allotment or extended period not exceeding one year, which may be fixed by the Chairman, the balance had to be paid. Non-payment attracted interest for the extended period. If the amount was not paid within 90 days or the extended period, earnest money was liable to be forfeited and the allotment may be cancelled. The two provisos of Rule 17 provided for certain concessions to certain categories. The amount, which was paid by the allottee, formed the security deposit for the due performance of the obligation, under the lease-cum-sale agreement between the Board and the allottee. This was to be so till the conveyance was executed regarding the site to the allottee. A lease-cum-sale agreement in Form 2 was to be entered into by the allottee. Every allottee was mandated to construct a building, which, we may clarify was to be a residential building, on the site in accordance with plan approved by the Board. The allottee was to comply with the conditions in the agreement.

35. Rule 17(6) fixed the period of two years from the date of execution of the lease-cum-sale agreement or such extended period, within which the building had to be put up. Till 29-5-1980, the power to extend the period was vested with the Board. After 29-5-1980 the power to extend by a written order was vested with the Chairman. If the building was not constructed within the period of two years or extended period, the allotment could be cancelled and the agreement revoked, the lease determined and the allottee evicted from the site by the Board. Such action was to be preceded by according a reasonable notice to the allottee against the proposed action. In the event of such action being taken, the allottee was entitled to the refund of the amount after forfeiting 12½% of the value.

36. It is under Rule 17(7)(*a*) that on expiry of 10 years of the allotment, the time arrived for conveying the rights over the site. When 10 years expired, if the allotment had not been cancelled or lease determined, in accordance with the Rules or in terms of the agreement, the Board, after issuing a notice to the allottee, calls upon the allottee to execute the sale deed at his cost. If the allottee failed to get the sale deed executed, the Board was to execute the sale deed and recover the cost.

37. Now, the time is ripe to advert to the statutory lease-cum-sale agreement referred to in Rule 17(4). It is in Form II and much turns on its terms and we advert to the same, which has been, admittedly, entered into by the first defendant with BDA:

"**FORM II**

[*See* Rule 17(4)]

lease-cum-sale agreement

An agreement made this ..... day of ..... 197..., between the City of Bangalore Improvement Trust Board, Bangalore, (hereinafter called the "Lessor/Vendor") which term shall wherever the context so permits, mean and include its successors in interest and assigns of the ONE PART and ..... hereinafter called Lessee/Purchaser (which term shall wherever the context so permits mean and include his/her heirs, executors; administrators and legal representatives) of the OTHER PART;

Whereas, the City of Bangalore Improvement Trust Board advertised for sale building sites ..... in Extension;

And, whereas, one of such building site in Site No.: ..... more fully described in the Schedule hereunder and referred to as property;

And, whereas, there were negotiation between the Lessee/Purchaser on the one hand and the Lessor/Vendor on the other for allowing the Lessee/Purchaser to occupy the property as Lessee until the payment in full of the price of the aforesaid site as might be fixed by the Lessor/Vendor as hereinafter provided;

And, whereas, the Lessor/Vendor agreed to do so subject to the terms and conditions specified in the City of Bangalore Improvement (Allotment of Sites) Rules, 1972, and the terms and conditions hereinafter contained;

And, whereas, thus the Lessor/Vendor has agreed to lease the property and the Lessee/Purchaser has agreed to take it on lease subject to the terms and conditions specified in the said rules and the terms and conditions specified hereunder:

Now this Indenture Witnesseth

1. The Lessee/Purchaser is hereby put in possession of the property and the Lessee/Purchaser shall occupy the property as a tenant thereof for a period of ten years from (here enter the date of giving possession) ..... or in the event of the lease being determined earlier till the date of such termination. The amount deposited by the Lessee/Purchaser towards the value of the property shall, during the period of tenancy, be held by the Lessor/Vendor as security deposit for the due performance of the terms and conditions of these presents.

2. The lessee/purchaser shall pay a sum of rupees … per year as rent on or before …… commencing from ….

3. The Lessee/Purchaser shall construct a building in the property as per plans, designs and conditions to be approved by the Lessee/Vendor and in conformity with the provisions of the City of Bangalore Municipal Corporations Act, 1949, and the Bye-laws made thereunder within two years from the date of this agreement:

Provided that where the Lessor/Vendor for sufficient reasons extends in any particular case the time for construction of such building, the Lessee/Purchaser shall construct the building within such extended period.

4. The Lessee/Purchaser shall not sub-divide the property or construct more than one dwelling house on it.

The expression "dwelling house" means a building constructed to be used wholly for human habitation and shall not include any apartments to the building whether attached thereto or not, used as a shop or a building of warehouse or building in which manufactory operations are conducted by mechanical power or otherwise.

5. The Lessee/Purchaser shall not alienate the site or the building that may be constructed thereon during the period to the tenancy. The Lessor/Vendor may, however permit the mortgage of the right, title and interest of the Lessee/Purchaser in favour of the Government of Mysore, the Central Government or bodies corporate like the Mysore Housing Board or the Life Insurance Corporation of India, Housing Cooperative Societies or Banks to secure moneys advanced by such Governments or bodies for the construction of the building.

6. The Lessee/Purchaser agrees that the Lessor/Vendor may take over possession of the property with the structure thereon if there is any misrepresentation in the application for allotment of site.

7. The property shall not be put to any use except as a residential building without the consent in writing of Lessor/Vendor.

8. The Lessee/Purchaser shall be liable to pay all outgoings with reference to the property including taxes due to the Government and the Municipal Corporation of Bangalore.

9. On matters not specifically stipulated in these presents the Lessor/Vendor shall be entitled to give directions to the Lessee/Purchaser which the Lessee/Purchaser shall carry out and default in carrying out such directions will be a breach of conditions of these presents.

10. In the event of the Lessee/Purchaser committing default in the payment of rent or committing breach of any of the conditions of this agreement or the provisions of the City of Bangalore Improvement (Allotment of Sites) Rules, 1972, the Lessor/Vendor may determine the tenancy at any time after giving the Lessee/Purchaser fifteen days' notice ending with the month of the tenancy, and take possession of the property. The Lessor/Vendor may also forfeit twelve-and-a-half per cent of the amount treated as security deposit under Clause 1 of these presents.

11. At the end of ten years referred to in Clause 1 the total amount of rent paid by the Lessee/Purchaser for the period of the tenancy shall be adjusted towards the balance of the value of the property.

12. If the Lessee/Purchaser has performed all the conditions mentioned herein and committed no breach thereof the Lessor/Vendor shall at the end of ten years referred to in Clause 1, sell the property, to the Lessee/Purchaser and all attendant expenses in connection with such sale such as stamp duty, registration charges, etc. shall be borne by the Lessee/Purchaser.

13. The Lessee/Purchaser hereby also confirms that this agreement shall be subject to the terms and conditions specified in the City of Bangalore Improvement (Allotment of Sites) Rules, 1972, and agreed to by the Lessee/Purchaser in his/her application for allotment of the site.

14. In case the Lessee/Purchaser is evicted under Clause 9 he shall not be entitled to claim from the Lessor/Vendor and compensation towards the value of the improvements or the superstructure erected by him on the scheduled property by virtue of and in pursuance of these presents.

15. It is also agreed between the parties hereto that Rs ..... (Rupees .....) in the hands of the Lessor/Vendor received by them from the Lessee/Purchaser shall be held by them as security for any loss or expense that the Lessor/Vendor may be put to in connection with any legal proceedings including eviction proceedings that may be taken against the Lessee/Purchaser and, all such expenses shall be appropriated by the Lessor/Vendor from and out of the moneys of the Lessee/Purchaser held in their hands.

THE SCHEDULE

Site No. ..... formed by the City of Bangalore Improvement Trust Board in Block No. ..... in the ..... Extension.

Site bound on—

East by:
West by:
North by:
South by:

and measuring east to west ... : ... north to south ..... in all measuring .... square feet.

In witness whereof the parties have affixed their signatures to this agreement.

Chairman.

The City of Bangalore Improvement Trust Board.

Witnesses:

1.

Lessee/Purchaser

2.

Witnesses:

1.

Lessee/Purchaser”

2.

38. The question then arises, as to what is the purport of Rule 18. Rule 18, in our view, produces the following effects and is intended to apply as follows:

38.1. It begins with a non obstante clause as far as Rule 18(1) is concerned. Rule 18(1) is to apply despite anything which is contained in the Rules itself. That apart, it would operate, notwithstanding any other Rules, Bye-laws and orders, which may occupy the field. Even an instrument executed in respect of any site allotted, rented or sold by the Board for the construction of buildings, will not detract from the exercise of power. The power, under Rule 18, is vested with the Chairman. The scope of the power is to execute a deed of conveyance. This is premised on the request being made by the allottee grantee or purchaser of the site. Rule 18(1) further contemplates that when the power is invoked by the Chairman under Rule 18(1), the restrictions, conditions and limitations mentioned in Rule 18(2) will ipso facto apply.

38.2. Rule 18(2) divides the categories into two. Rule 18(2)(*a*) deals with the situation where no building has been constructed on the site. Rule 18(2)(*b*) deals with the situation where a building has been constructed on the site. Since, we are, in this case, concerned with the case of a site on which the building has not been constructed, within the meaning of the Rules, we may indicate that the condition that is imposed, includes the obligation on the part of the purchaser to construct the building on the site, within the period as may be specified by the Board. The purchaser is visited with the restriction that he shall not, without the approval of the Board, construct on the site, any building other than the building for which the site was allotted, rented or sold. The purchaser, who is the beneficiary of deed of conveyance in his favour under Rule 18(1), is bound by the further limitation or condition that the purchaser shall not alienate the site within a period of 10 years from the date of allotment. The restriction against alienation, however, could not operate against a mortgage, as provided in Rule 18(2)(*a*)(*iii*). The mortgage is, however, to be one effected for the purpose of construction of the building on the site.

38.3. Rule 18(2)(*c*) visits the purchaser, committing breach of any of the conditions in clause (*a*), inter alia, with the resumption of the site, no doubt, after a reasonable notice. Rule 18(2)(*c*) further declares that all transactions entered into in contravention of the conditions in clauses (*a*) and (*b*) are to be null and void ab initio. The transactions, which are referred to in Rule 18(2)(*c*), are the transactions which are referred to in Rule 18(2)(*a*)(*iii*) or Rule 18(2)(*b*).

39. Now, the question would arise as to the effect of the interplay of Rule 17, the lease-cum-sale agreement and the provisions of Rule 18(1) and Rule 18(2).

39.1. An allottee begins his innings as a lessee. The terms of the lease are set out in the Rules itself, which we have adverted to. The entire value of the site is to be paid at the very beginning, as already noticed, or within the extended period. However, the allottee continues as a lessee. He is obliged to observe the conditions of the lease-cum-sale agreement. He is obliged to pay rent, as provided in the Rules and also the lease-cum-sale agreement.

39.2. Under Clause (5) of the lease-cum-sale agreement, the allottee, who is also described as the lessee/purchaser, is forbidden from alienating the site or the building that may be constructed during the period of the tenancy. The period of tenancy is fixed as a period of 10 years from the date of giving possession to the allottee. In other words, an allottee, who is obliged to enter into a lease-cum-sale agreement is prohibited from alienating the site or the building, which may be put up for the period of 10 years. This period of 10 years is adverted to in Rule 17(7). In other words, for a period of 10 years, the allottee, who is also described as the lessee and purchaser, cannot alienate the site or the building. It is to be understood that by virtue of Rule 7 of the Rules, the allottee is treated as a lessee.

39.3. What the Rules and agreement contemplate is, though the entire amount of the value of the site is payable within a period of 90 days or extended period under Rule 17(2), the allottee/lessee becomes the purchaser of the site, only when the conveyance deed is executed in his favour under Rule 17(7). During this period, the Rules and the agreement contemplate clearly that the allottee puts up the building for his residence but he cannot alienate the property during the period of 10 years, which is the period of tenancy, and this period of 10 years begins, from the time he is put into possession, based on the agreement.

40. Rule 18(1) and Rule 18(2), in a manner of speaking, fast track the conveyance. In other words, Rule 18(1) enables the Chairman, on the request of an allottee, within the meaning of Rule 17, to execute a deed of conveyance, even before the expiry of 10 years, contemplated in Rule 17(7). However, when an allottee is the beneficiary of the exercise of power under Rule 18(1) and a conveyance deed is executed to him, the rule-maker has still incorporated the condition against alienation for a period of 10 years, which is not to operate from the date of the conveyance. The embargo against alienation in the case of the conveyance deed being executed in favour of the allottee during the currency of the lease-cum-sale agreement in Form II will operate for a period of 10 years from the date of allotment.

41. Thus, in a case of allotment under Rule 17, the condition against alienation is to exist for a period of 10 years from the date of allotment. In the case of conveyance deed, which is executed in favour of the allottee, the condition against alienation will again operate for the period of ten years from the date of allotment. This is apart from the other conditions viz. construction of the building on the site. In short, the allottee becomes the owner of the site before the expiry of 10 years upon power being invoked under Rule 18(1) but the assignment of the rights, which would have been otherwise absolute, is subjected to the conditions, as mentioned in Rule 18(2)(*a*), which includes the prohibition against the alienation. We must remind ourselves that under Section 29(3) of the 1945 Act, the Transfer of Property Act is eclipsed by the terms of any grant or transfer. The condition against alienation is not to be counted from the date of the execution of the conveyance deed but for the unexpired period, in the case of the lease-cum-sale agreement executed.

42. The impact of Rule 18(3) is to be noticed. This Rule was substituted w.e.f. 21-12-1976. The Rule contemplates two conditions for its operation. *Firstly*, it operates without prejudice to the provisions of Rule 17. *Secondly*, Rule 18(3) applies, notwithstanding anything contained in Rule 18(2). Now, coming to the exact scope of Rule 18(3), it contemplates the existence of either of the conditions mentioned therein. They are—(1) the lessee applies pointing out that for reason beyond his control, he is unable to reside in the City of Bangalore; (2) by reason of his insolvency or impecuniosity, it has become necessary for him to sell the site and or site and the building, if any, he may have put up thereon.

43. We have already explained the scope of Rule 18 and the interplay between Rule 17 and Rule 18. Rule 18(3) must be read along with Rule 17. The argument to the contrary by the plaintiff is untenable. In fact, it would involve denying relief intended for persons falling under Rule 17, as will be clear hereinafter. A perusal of Rule 18(3) would reveal the following:

43.1. While a person is a lessee (which means while he is an allottee), the course open to an allottee/lessee, is to follow the Rules and lease-cum-sale agreement and put up a residential building on the site. He may be disabled by the financial condition from fulfilling his promise under the lease-cum-sale agreement and the Rules to put up the building. In either case i.e. when because of the dire financial straits he finds himself in, he can apply to the Authority to permit him to sell the site, if no building has been put up or if he has put up a building on the site, the site along with the building.

43.2. The courses of action open to BDA would be as follows: it may with the previous approval of the State Government, call upon the applicant, when he has not put up the building, to surrender the site. Thus, in a case where a lessee/allottee wishes to sell the site, the Rules contemplate that site would have to be surrendered in favour of the Authority. The rationale appears to be, instead of permitting the site being sold to any third party, the site would go back to the Authority, which in turn, will enable it to allot it to the eligible persons waiting in the queue. Where a building has been put up, again, Rule 18(3)(*b*) contemplates that the lessee can be permitted to sell the vacant site and the building. When the lessee, on the basis of his request that he may be permitted to sell the site, has surrendered the site to BDA, the further consequence contemplated is that the lessee will get back the value of the allotted site, which he has deposited under Rules 17(1) and (2). Over and above the same, the lessee is to be paid an additional sum equal to the amount of interest @ 12% p.a.

44. We must, at this juncture, also do justice to the words in Rule 18(3) "but without prejudice to the provisions of Rule 17". The import of this part of Rule 18(3) is as follows—under Rule 17, it is open to the Authority to cancel allotment and revoke the agreement and determine the lease. The allottee can be evicted from the site. The amount of 12½% of the value paid, under Rule 17(1) can be forfeited. No doubt, the Board will refund the balance to the allottee. This is a consequence which is contemplated in Rule 17(6). This power with the Board is kept preserved when an allottee does not put up the building. Thus,

Rule 18(3) must be understood as a power with the Board to be exercised with the previous approval of the State Government. Thus, an allottee, as a rule, is expected to hold up to the promise he has made about his financial capacity to construct the building. Consequences in Rule 17 would remain alive.

45. The power under Rule 18(3) appears to us to encompass situations of insolvency or impecuniosity, which overtake an allottee after the allotment takes place. In other words, the unplanned and uncontemplated vicissitudes of life may visit him inter alia with insolvency or impecuniosity, leaving him with no other choice but to sell the site or even the site with the building. The fact that power under Rule 18(3) is not meant to be a mechanical exercise of power, can be discerned from the requirement that "previous" approval of the State Government is the sine qua non for BDA exercising its power.

The undisputed facts

46. BDA made an allotment of the plot on 4-4-1979 to the first defendant. The lease-cum-sale agreement was also executed on the same date. It is while so that on 17-11-1982, the plaintiff entered into the agreement with the first defendant. Under the allotment, the first defendant was put in possession of the site.

47. A perusal of the agreement would reveal the following:

"NOW THIS DEED WITNESSETH AS FOLLOWS:

1. The vendor does hereby agree to sell the schedule site to the purchaser for a price of Rs 50,000 (Rupees fifty thousand only).

2. The purchaser has hereby agreed with the vendor to purchase the schedule site for the said price of Rs 50,000 (Rupees fifty thousand only).

3. The purchaser has paid a sum of Rs 30,000 (Rupees thirty thousand only) as advance and part of the purchase money by Cheque No. 81/YA. 709838 dated 17-11-1982, drawn on Indian Bank, Malleswaram, Bangalore to the vendor, who hereby acknowledges the receipt of the said amount from the purchaser.

4. The vendor does hereby agree with the purchaser to obtain the absolute sale deed from the Bangalore Development Authority and then complete the sale transaction with the purchaser. It is agreed that the sale has to be completed on or before the expiry period of three months from the day the vendor obtains the absolute sale deed from the Bangalore Development Authority and intimates the purchaser in writing.

5. The vendor has handed over the original possession certificate to the purchaser.

6. The vendor has agreed to deliver the following documents to the purchaser:

(*a*) Absolute sale deed after obtaining from the Bangalore Development Authority, Bangalore.

(*b*) Katha certificate issued by the Bangalore Development Authority in favour of the vendor.

(*c*) NIL Encumbrance Certificate.

(*d*) Up-to-date tax paid receipt.

7. The vendor hereby agrees with the purchaser to make necessary applications to the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 and obtain permission to transfer the schedule (Ceiling and necessary site to the purchaser. The purchaser has agreed to render necessary assistance to the vendor in this regard.

8. The vendor has put the purchaser in possession of the schedule site this day as part-performance of this contract of sale. The vendor covenants with the purchaser that the purchaser is entitled to put up temporary structure on the schedule site."

48. Clause 5 shows that the first defendant has handed over the original possession certificate to the plaintiff. Clause 8 recites that the first defendant has put the plaintiff in possession of the site on the date of the agreement as part-performance of the contract of sale. The first defendant further covenanted with the plaintiff that he is entitled to construct a temporary structure on the site.

The correspondence before the suit

49. The plaintiff, on 1-3-1983 i.e. within four months of agreement dated 17-11-1982, wrote to the first defendant as follows:

"Y. SUBBARAJU
ENGINEERING CONTRACTORS
24, 2ND CROSS, KODANDARAMAPURAM,
MALLESWARAM,
BANGALORE — 560 003

Date: 1-3-1983

REGISTERED POST ACK. DUE

To,
Smt Jayalakshmamma,
W/o K.T. Krishnappa,
Ex. MLA, TB Extn.,
Nagamangala,
Mandya District
Madam,

Sub.: Agreement for the sale of Site No. 1588, Block II at Banashankari I Stage Extension — Regarding.

You have agreed for the sale of the above site, for which an agreement was made on 17-11-1982 on the condition that you will register the sale deed within 3 months from the date of obtaining all the necessary documents required in this connection from BDA. *So far you have not*

informed about obtaining the documents from BDA. You had promised that all the documents will be handed over to me within 2 weeks' time to facilitate me for registering the property.

Since 3 months are over, I am proposing to sell to my nominee for the agreed amount of Rs 50,000 (Rupees fifty thousand only), as you have failed to produce the clear documents. I am forced to transfer the property to my nominee at the agreed amount of Rs 50,000 with you. This is for your kind information and early necessary action.

Thanking you,

Yours faithfully
sd/-
(Y. Subbaraju)"
(emphasis supplied)

There is no reference to any threat by the first defendant to sell to others.

50. The plaintiff did not rest content with the first letter and in the very next month, on 26-4-1984, complains to the first defendant, by pointing to the letter dated 1-3-1983 and pointing out that the first defendant has not replied to his letter, notifying her readiness to comply with the agreement. Thereafter, it is stated that by the letter dated 26-4-1984, he was finally calling upon the first defendant to act in terms of the agreement, execute the sale deed in favour of the plaintiff or his nominee within one week from the date of receipt of the letter, failing which, litigation would be launched. This letter provoked the first defendant to reply through a lawyer on 8-5-1984. The first defendant admitted the agreement dated 19-11-1982. She, however, pointed out that it was not as per the terms and conditions of letters sent by the plaintiff. The plaintiff, it was pointed out, was enjoined upon to complete the sale within three months from the date of the agreement. It was pointed out that time was of the essence of the contract and the contract has lapsed and the advance was forfeited. All documents of title relating to the site, it was stated, were handed over to the plaintiff at the time of the agreement itself. In view of the breach on the part of the plaintiff to pay the balance of the consideration, there was no legally enforceable contract. It was stated that the first defendant was always willing and ready to perform her part of the contract and to execute the sale deed and convey the site. She further set up the case that she had agreed to sell the site for Rs 1,50,000.

51. On 3-7-1984, the plaintiff sent a lawyer notice. Clause 4, which we have extracted, in the agreement, was invoked. The plaintiff pointed out that in terms of the said clause, the first defendant was obliged, in the first place, to obtain the sale deed from BDA and to inform the plaintiff in writing about having obtained the sale deed. The plaintiff was also to obtain the *khata* certificate. Period of three months would begin to run only from the said date. The claim of the first defendant that he had handed over the documents of title, was denied. The further payments, which were made, after having paid Rs 30,000 on the

date of the agreement, was stated to be unnecessary but it was pointed out that the total sum of Rs 50,000 stood paid. It was reiterated that on the date of the sale agreement itself, the plaintiff was put in possession. The claim that the sale consideration was Rs 1,50,000 was denied. The first defendant, it was pointed out, had committed default in not complying with the terms of the agreement, by obtaining absolute sale deed from BDA. Legal action was spoken of by the plaintiff.

52. Lastly, on 14-2-1985, a legal notice was sent by the plaintiff to the first defendant. Thereinafter, referring to the agreement, it was complained that though it was then more than two years that the first defendant had entered into the agreement. The first defendant had given a reply on 8-5-1984, pleading excuses for execution of the sale deed. Thereafter, the first defendant was called upon to act in terms of the sale agreement and execute the sale deed within fifteen days of the receipt of the notice. It was held out that failure on the part of the first defendant would constrain the plaintiff to seek relief from the court. That the plaintiff meant business, is proved by the fact that the suit, out of which this appeal arises, was filed on 16-11-1985.

The pleadings

53. In the plaint, the plaintiff, inter alia, again reiterated that he was put in possession of the site at the time of executing the agreement. After referring to the correspondence, which we have referred to, it is averred that the first defendant was not willing to perform her part of the contract. It was complained that the first defendant could not unilaterally treat the contract as cancelled and that he had unjustly repudiated her obligation. It was pleaded that he is likely to execute a sale deed in favour of some other person. To prevent the same, the suit for specific performance of the agreement and for injunction, it was stated, was filed. It was further stated that the first defendant is bound and liable to obtain the absolute sale deed from BDA and deliver the same to the plaintiff to execute the sale deed.

54. In the amended pleadings, there is reference to the husband and the son being brought on the party array on the death of the first defendant. There is also reference to the subsequent sale by the son to the appellant. The prayer sought was a direction to execute the sale deed and to convey the title and deliver the documents of title including the sale deed, after obtaining the same from BDA and injunction was sought against interfering with the plaintiff's lawful possession. Such relief of injunction was also sought against the appellant also.

55. The first defendant, in her written statement, denied the case of the plaintiff that he was ready and willing. According to her, the plaintiff had to pay the balance of Rs 1,00,000, which remains after paying Rs 50,000. Time was pointed out to be essence of the contract. The first defendant was ready and willing to perform her part. It was further alleged that the plaintiff was not put in possession.

56. Defendant 1(*b*), son of the first defendant, filed a written statement. He refers to the clause prohibiting alienation for a period of ten years from the date of allotment, and that, absolute rights were not created by BDA by the allotment. It was further contended that the first defendant, his mother, was only the lessee of the site and she did not have any right to convey ownership rights. She was not competent to convey the property. It was pointed out that the agreement was a void agreement and could not be enforced.

57. The second defendant, in his written statement, inter alia, pleaded no knowledge about the agreement dated 17-11-1982, providing that the first defendant must obtain an absolute sale deed from BDA and it must be intimated in writing to the plaintiff. The allegation that the plaintiff was put in possession, was denied as false. Regarding putting the plaintiff in possession of the possession certificate, the appellant pleaded no knowledge. It was further pleaded that the first defendant was the absolute owner in possession of the site and, after her demise, in view of the death of the husband of the first defendant, the son became the owner of the property. It was pleaded that the first defendant was a site-less and houseless person and permanent resident of Bangalore City. After having made due enquiries, property was purchased by sale deed dated 19-9-1996. An additional written statement was filed by the appellant to the amended plaint which was largely devoted to his case about him being a bona fide purchaser.

The oral evidence

58. PW 2, the son of the plaintiff (the plaintiff died on 5-1-2001) deposed, inter alia, that possession of the entire property was delivered to the plaintiff. Subsequently, his legal representatives are in possession. After the plaintiff was put in possession, he has allegedly constructed a temporary shed in it. The shed was demolished in the year 1991 during the Cauvery riots. He has never made any attempts to go to BDA to know about the suit property. He deposed that since he guessed that since 1960 his father commenced civil contract work he was doing so till his death. With reference to the question that the site was inalienable for a period of ten years, PW 2 answered that it could have been sold to them. He confessed to ignorance of BDA Rules regarding allotment. He did not know that the lease period was completed on 13-5-1989. He did not know about the non-alienation clause in the allotment by BDA. He did not know that in the year 1985, his father did not have the right to file the suit. He was associated with his father in construction work. He refers to Ext. P-14, which was a show-cause notice received by the plaintiff from BDA. He deposed that the plaintiff intimated BDA about the sale agreement.

59. The following evidence of PW 2, the son of the plaintiff is very relevant. He has deposed inter alia as follows:

> "*My father was contractor and in real estate business since 30 years. It is not true that there are 70 to 80 cases pending in different courts. There are about 35 to 40 cases pending. My elder brother is doing construction.*"

"*I guess since 1960 my father commenced civil contract work. He was doing same business till his death. Simultaneously, he commenced real estate business and continued till his demise.*"

"*My father was getting monthly rental income of Rs 1,00,000.*"

"*In the name of our mother, there is commercial complex at Shehsdripuram. We presently get monthly rent of Rs 4,50,000. The said commercial complex is joint family property.*"

"*PW 2 has entered into an agreement to purchase 24 acres land at Tannishandra. He has negotiated to purchase the land @ Rs 8,00,000 per acre. At also Ulsoor, they have vacant site of 90,000 sq ft. It is quite expensive property, PW 2 deposes. They are staying at a rented house. At Cunningham Road, they have got a property which is in dispute. Cunningham property is 1,20,000 sq ft. It is vacant land. Most importantly PW 2 deposes that if decree is denied they will have loss of money.*"

60. The appellant (second defendant) examined as DW 1, inter alia, deposed that he owned both irrigated and non-irrigated lands to the extent of 12 acres. He did not own any site or building in Bangalore. He invested amount arrived from agriculture and milk-vending business to purchase this property. His father helped him. On the date of purchase, the possession was handed over to him. Apart from Bettanna, none acted as broker at the time of purchase. He, inter alia, further states that he went to the site. He found tin shed. He made inquiries with regard to ownership of the site and possession. He was told that one Sudershan was the owner of the site, who used to visit the site often. He, along with his elder brother, who was residing in Bangalore, went to the house of Sudershan. Sudershan wanted price of Rs 6,00,000. Finally, the parties agreed for Rs 4,50,000. Certain xerox copies of documents, including possession certificate, was handed over to him and he consulted an advocate who said that the title was clear. On the date of sale, the possession was handed over to the appellant. Property was mutated. The broker was not aware of the pendency of the suit. He will be put to great hardship if the suit is decreed. The original of the sale deed is with the bank.

61. In cross-examination, the appellant (second defendant), inter alia, deposed that he has studied up to PUC. His brothers were staying in Bangalore. His father owned 12 acres. Six acres were irrigated and six acres was dry land. His brothers were doing jewellery work in Bangalore. 12 acres was ancestral property. They used to get daily 20 litres of milk per day. They used to get Rs 195-196 per day by selling milk. Father had not spent any money during marriage of elder brothers. Neither the father, the second defendant nor his brother Mukund were income tax assessees. He has no record to show that he had the money to the extent of Rs 4,50,000 with him. His brothers were staying in the rented house. He knew the broker since his childhood. He invested Rs 3,00,000 of his own. The remaining was paid by his father. He earned Rs 3,00,000 by selling milk and vegetables. He informed the broker for the first time in June 1996 that he intended to purchase the site at Bangalore. After seeing the site on the next day itself, he approached Defendant 1(*a*) and

Defendant 1(*b*) for discussion. Defendant 1(*a*) was MLA of their Taluk and also former Minister. The negotiations were completed on the same day. The amount was paid by cash. His advocate did not tell him that both Defendant 1(*a*) and Defendant 1(*b*) had acquired title and informed him to purchase from both. The entire process of seeing the site, sale talks, were done in the first week of June 1996. Defendant 1(*a*) and Defendant 1(*b*) did not disclose regarding the pendency of the suit. He did not inquire with BDA as to who is the owner of the site. He denied the suggestion that till date, the legal representatives of the original plaintiff were in possession of the property. The suggestion that the possession of the site was handed over to the plaintiff, was denied. Defendant 1(*b*) furnished xerox copy of the possession certificate at the time of negotiations. After receipt of suit summons, he was not on talking terms with Defendant 1(*a*) and Defendant 1(*b*). Defendant 1(*b*) disclosed to him that the original possession certificate was lost and, therefore, he gave the duplicate certificate.

62. Defendant 1(*b*) was examined as DW 2. He has deposed about the non-alienation clause and about the agreement in favour of the plaintiff for Rs 50,000. At the time of the agreement, there was a shed on the site. It was agreed to execute sale deed in favour of the plaintiff after getting the absolute sale from BDA. BDA was supposed to execute the sale deed after the 10-year lease period. The plaintiff had not taken any steps to waive off the non-alienation clause for the period of 10 years. His father gave consent to BDA to issue the sale deed only in his name. He knew the appellant from June 1996. The name of the broker Bettana, is spoken to by him. He speaks about handing over of xerox copies to DW 1. The second defendant had met him twice in June 1996. The appellant, when he met DW 2 for the second time, showed his interest to purchase the property in September 1996 for Rs 4,50,000. The appellant took time till September 1996 to ascertain whether he was in possession and to mobilise funds. Entire amount of Rs 4,50,000 was paid in cash.

63. DW 2 owned a residential house at Arti Nagar in Judges Colony. The said property was standing in the name of his father. He owned an industrial site. He did not own any residential property in Bangalore apart from the residential property. Since, the plaintiff was not having any right, they did not inform the appellant regarding the pendency of the suit. The plaintiff never asked his mother to alienate the suit property before expiry of the non-alienation period. He took duplicate possession certificate from BDA in June 1996. He did not hand over the transfer agreement executed by BDA at the time of sale in favour of the appellant. His father was present, when the appellant met him twice. His mother has not given any application to BDA to waive-off the non-alienation clause. He denied the suggestion that possession was handed over to the plaintiff on the date of agreement. There is no document to show that he has received Rs 4,50,000 from the second defendant. There is reference to a site as Koramangala being allotted to him and it being cancelled by the High Court. He is confronted with the agreement to sell the said site in favour of another person (P-19).

The findings by the trial court

64. Seven issues were struck by the trial court. Thereafter, two additional issues were also raised, of which, the first additional issue was whether the second defendant, second legal representative of deceased defendant, "proved that the proved sale agreement" is void. The trial court found the agreement dated 17-11-1982 as proved. It further found that the plaintiff has not proved that the plaintiff was put in possession. It was further found that till the year 1989, the first defendant was unable to take an absolute sale deed from BDA and, therefore, unable to execute the sale deed in response to the communication sent by the plaintiff. It was further found that since the first defendant was not able to get the sale deed from BDA, she could not cancel the agreement unilaterally. It was further found that the plaintiff ought to have waited till the expiry of the lease period. It was found, however, that the plaintiff was always ready and willing, however, at the same time, the first defendant was not in breach.

65. It was further found that there was no iota of evidence to prove that the defendant had tried to sell the property in favour of the third party. It was further found that there was no oral agreement of sale for Rs 1,50,000 and the plaintiff was not in breach. This aspect was found against the first defendant. It was found that the second defendant was a bona fide purchaser of the site for value without notice of the earlier agreement of sale as well as pendency of the suit. It was further found that in view of the allotment and the lease-cum-sale agreement, the plaintiff had no right to file the suit so as to enforce the agreement to sell during the year 1985. The plaintiff ought to have waited till year 1989. The first defendant died on 18-7-1994 without obtaining the absolute sale deed from BDA. After her death, the property stood transferred in favour of her son and the son sold it to the appellant. On 17-9-1996, when the sale took place, the predecessor-in-interest of the second defendant was not a party. The suit property was sold to the second defendant for a huge sale consideration of Rs 4,50,000. There was no cause of action to institute the suit.

66. On these findings, inter alia, the trial court partly decreed the suit by ordering return of Rs 50,000 along with 9% interest per annum by Defendants 1(*a*) and 1(*b*). The relief of permanent injunction was rejected.

In pari delicto potior est conditio defendentis

67. The principle of *in pari delicto potior est conditio defendentis* is a maxim which we must bear in mind. We need only notice the following discussion by this Court. The decision of this Court in *Kedar Nath Motani*[2] comes to mind: (AIR p. 216, para 9)

> "*9.* … Where both parties do not show that there was any conspiracy to defraud a third person or to commit any other illegal act, the maxim, *in pari delicto*, etc. can hardly be made applicable."

2 *Kedar Nath Motani* v. *Prahlad Rai*, AIR 1960 SC 213 : (1960) 1 SCR 861

68. This Court in *Kedar Nath Motani*[2] also referred to the following statement by Lord Mansfield in *Holman* v. *Johnson*[4], wherein it was held as follows: (*Kedar Nath Motani case*[2], AIR pp. 217-18, para 12)

"*12*. The law was stated as far back as 1775 by Lord Mansfield in *Holman* v. *Johnson*[4], Cowp at p. 343, ER at p. 1121 in the following words: (ER p. 1121)

> '… The principle of public policy is this; *ex dolo malo non oritur actio*. No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise *ex turpi* causa, or the transgression of a positive law of this country, there the Court says he has no right to be assisted. *It is upon that ground the Court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it; for where both are equally in fault, potior est conditio defendentis*.'

There are, however, some exceptions or "supposed exceptions" to the rule of *turpi causa*. In *Salmond and William on Contracts*, four such exceptions have been mentioned, and the fourth of these exceptions is based on the right of *restitutio in integrum*, where the relationship of trustee and beneficiary is involved. Salmond stated the law in these words at p. 352 of his book (2nd Edn.):

> 'So if *A* employs *B* to commit a robbery, *A* cannot sue *B* for the proceeds. And the position would be the same if *A* were to vest property in *B* upon trust to carry out some fraudulent scheme: *A* could not sue *B* for an account of the profits. But if *B*, who is *A*'s agent or trustee, receives on *A*'s account money paid by *C* pursuant to an illegal contract between *A* and *C* the position is otherwise and *A* can recover the property from *B*, although he could not have claimed it from *C*. In such cases public policy requires that the rule of *turpis causa* shall be excluded by the more important and imperative rule that agents and trustees must faithfully perform the duties of their office.'

Williston in his *Book on Contracts* (Revised Edn.), Vol. VI, has discussed this matter at p. 5069, Para 1785 and in paras 1771 to 1774, he has noted certain exceptional cases, and has observed as follows:

> 'If recovery is to be allowed by either partner or principal in any case, it must be where the illegality is of so light or venial a character that it is deemed more opposed to public policy to allow the defendant to violate his fiduciary relation with the plaintiff than to allow the plaintiff to gain the benefit of an illegal transaction.'

2 *Kedar Nath Motani* v. *Prahlad Rai*, AIR 1960 SC 213 : (1960) 1 SCR 861
4 (1775) 1 Cowp 341 : 98 ER 1120

Even in India, certain exceptions to the rule of *turpi causa* have been accepted. Examples of those cases are found in *Palaniyappa Chettiar* v. *Chockalingam Chettiar*[5] and *Bhola Nath* v. *Mul Chand*[6]." (emphasis supplied)

69. We may also notice the following statement by this Court in *Kedar Nath Motani*[2]: (AIR pp. 218-19, para 15)

"*15*. The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Williston and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail."

70. In *Sita Ram* v. *Radhabai*[7], this Court observed as follows: (AIR p. 537, para 12)

"*12*. The principle that the courts will refuse to enforce an illegal agreement at the instance of a person who is himself a party to an illegality or fraud is expressed in the maxim *in pari delicto portior est conditio defendantis*. But as stated in Anson's *Principles of the English Law of Contracts*, 22nd Edn., p. 343: 'there are exceptional cases in which a man will be relieved of the consequences of an illegal contract into which he has entered — cases to which the maxim does not apply. They fall into three classes: (*a*) where the illegal purpose has not yet been substantially carried into effect before it is sought to recover money paid or goods delivered in furtherance of it; (*b*) where the plaintiff is not *in pari delicto* with the defendant; (*c*) where the plaintiff does not have to rely on the illegality to make out his claim'."

71. In *Narayanamma*[3], this Court was considering a suit for specific performance, which was resisted on the ground that the agreement to sell was contrary to the provisions of the statute. Section 61 of the Karnataka Land Reforms Act, 1961 provided that no land for which occupancy was granted, shall within 15 years of the order of the Tribunal, be transferred by sale, inter

5 1920 SCC OnLine Mad 152 : ILR (1921) 44 Mad 334
6 1903 SCC OnLine All 21 : ILR (1903) 25 All 639
2 *Kedar Nath Motani* v. *Prahlad Rai*, AIR 1960 SC 213 : (1960) 1 SCR 861
7 AIR 1968 SC 534
3 *Narayanamma* v. *Govindappa*, (2019) 19 SCC 42 : (2020) 4 SCC (Civ) 363

alia. A partition was permitted. Equally, a mortgage could be effected to secure a loan. Drawing support from the judgment of this Court in *Kedar Nath*[2], this Court, inter alia, as follows: (*Narayanamma case*[3], SCC pp. 52-53, paras 15-16)

> "*15*. The three-Judge Bench[2] of this Court, after referring to the aforesaid judgments, speaking through M. Hidayatullah, J. (as his Lordship then was), observes thus: (*Kedar Nath Motani case*[2], AIR pp. 218-19, para 15)
>
> '*15*. The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Williston and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail.'
>
> *16. It could thus be seen, that this Court has held that the correct position of law is that, what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. This Court further held, that if the illegality is trivial or venial and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position.* It has further been held, that a strict view must be taken of the plaintiff's conduct and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. However, if the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose is achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail." (emphasis supplied)

72. In *Narayanamma*[3], this Court further held as follows: (SCC pp. 58-59, paras 24-26)

> "*24*. The transaction between the late Bale Venkataramanappa and the plaintiff is not disputed. Initially the said Bale Venkataramanappa had executed a registered mortgage deed in favour of the plaintiff.

2 *Kedar Nath Motani* v. *Prahlad Rai*, AIR 1960 SC 213 : (1960) 1 SCR 861
3 *Narayanamma* v. *Govindappa*, (2019) 19 SCC 42 : (2020) 4 SCC (Civ) 363

Within a month, he entered into an agreement to sell wherein, the entire consideration for the transfer as well as handing over of the possession was acknowledged. It could thus be seen, that the transaction was nothing short of a transfer of property. Under Section 61 of the Reforms Act, there is a complete prohibition on such mortgage or transfer for a period of 15 years from the date of grant. Sub-section (1) of Section 61 of the Reforms Act begins with a non obstante clause. It is thus clear that, the unambiguous legislative intent is that no such mortgage, transfer, sale, etc. would be permitted for a period of 15 years from the date of grant. Undisputedly, even according to the plaintiff, the grant is of the year 1983, as such, the transfer in question in the year 1990 is beyond any doubt within the prohibited period of 15 years. Sub-section (3) of Section 61 of the Reforms Act makes the legislative intent very clear. It provides, that any transfer in violation of sub-section (1) shall be invalid and it also provides for the consequence for such invalid transaction.

25. Undisputedly, both, the predecessor-in-title of the defendant(s) as well as the plaintiff, are confederates in this illegality. Both, the plaintiff and the predecessor-in-title of the defendant(s) can be said to be equally responsible for violation of law.

26. However, the ticklish question that arises in such a situation is: 'the decision of this Court would weigh in side of which party'? As held by Hidayatullah, J. in *Kedar Nath Motani*[2], the question that would arise for consideration is as to whether the plaintiff can rest his claim without relying upon the illegal transaction or as to whether the plaintiff can rest his claim on something else without relying on the illegal transaction. Undisputedly, in the present case, the claim of the plaintiff is entirely based upon the agreement to sell dated 15-5-1990, which is clearly hit by Section 61 of the Reforms Act. There is no other foundation for the claim of the plaintiff except the one based on the agreement to sell, which is hit by Section 61 of the Act. *In such a case, as observed by Taylor, in his "Law of Evidence" which has been approved by Gajendragadkar, J. in Immani Appa Rao*[8]*, although illegality is not pleaded by the defendant nor sought to be relied upon him by way of defence, yet the Court itself, upon the illegality appearing upon the evidence, will take notice of it, and will dismiss the action ex turpi causa non oritur actio i.e. no polluted hand shall touch the pure fountain of justice*. Equally, as observed in *Story's Equity Jurisprudence*, which again is approved in *Immani Appa Rao*[8], where the parties are concerned with illegal agreements or other transactions, courts of equity following the rule of law as to participators in a common crime will not interpose to grant any relief, acting upon the maxim *in pari delicto potior est conditio defendentis et possidentis*." (emphasis supplied)

2 *Kedar Nath Motani* v. *Prahlad Rai*, AIR 1960 SC 213 : (1960) 1 SCR 861
8 *Immani Appa Rao* v. *Gollapalli Ramalingamurthi*, (1962) 3 SCR 739 : AIR 1962 SC 370

73. This Court in *Narayanamma*[3] finally found as follows: (SCC p. 59, para 28)

> "*28.* Now, let us apply the other test laid down in *Immani Appa Rao*[8]. At the cost of repetition, both the parties are common participator in the illegality. In such a situation, the balance of justice would tilt in whose favour is the question. As held in *Immani Appa Rao*[8], if the decree is granted in favour of the plaintiff on the basis of an illegal agreement which is hit by a statute, it will be rendering an active assistance of the court in enforcing an agreement which is contrary to law. As against this, if the balance is tilted towards the defendants, no doubt that they would stand benefited even in spite of their predecessor-in-title committing an illegality. However, what the court would be doing is only rendering an assistance which is purely of a passive character. As held by Gajendragadkar, J. in *Immani Appa Rao*[8], the first course would be clearly and patently inconsistent with the public interest whereas, the latter course is lesser injurious to public interest than the former."

Cases of conditional decree of specific performance

74. The decision, which first comes to mind and is oft-quoted, is the decision of the Privy Council in *Motilal* v. *Nanhelal*[9]. The Court, in the said case, affirmed the decision of the Judicial Commissioner, decreeing a suit for specific performance, taking note of Section 50 of the Central Provinces Act of 1920, which read as follows and the Court, inter alia, held as follows thereafter: (SCC OnLine PC)

> "… 'If a proprietor desires to transfer the proprietary rights in any portion of his sir land without reservation of the right of occupancy specified in Section 49, he may apply to a revenue officer and, if such revenue officer is satisfied that the transferor is not wholly or mainly an agriculturist, or that the property is self-acquired or has been acquired within the twenty years past preceding, he shall sanction the transfer.'
>
> In view of the abovementioned construction of the agreements of 4-9-1914 —namely, that Sobhagmal agreed to transfer the cultivating rights in the sir land—there was, in their Lordships' opinion, an implied covenant on his part to do all things necessary to effect such transfer, which would include an application to the revenue officer to sanction the transfer."

75. In other words, in an agreement wherein the vendor agrees to convey property, which is permissible only with the permission of some Authority, the court can, in appropriate cases, grant relief. We need only notice two recent judgments which have reiterated the principle, the first of which is reported in *Vishwa Nath Sharma* v. *Shyam Shanker Goela*[10], which is relied upon, in fact, by the respondents. The decision of this Court, again relied upon by the

3 *Narayanamma* v. *Govindappa*, (2019) 19 SCC 42 : (2020) 4 SCC (Civ) 363
8 *Immani Appa Rao* v. *Gollapalli Ramalingamurthi*, (1962) 3 SCR 739 : AIR 1962 SC 370
9 1930 SCC OnLine PC 71 : AIR 1930 PC 287
10 (2007) 10 SCC 595

respondents in *Ferrodous Estates (P) Ltd.* v. *P. Gopirathnam*[11] also reiterates the said view.

76. In *Ferrodous Estates*[11], the matter arose under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The High Court, in the impugned judgment[12], had dismissed the suit for specific performance, taking the view that till 1999, when the Tamil Nadu Urban Ceiling Act was repealed, the agreement was not enforceable. That apart, under the agreement of sale, vacant land, in the aggregate, exceeding the ceiling limit of the plaintiff, would have to be conveyed to him, attracting the VETO contained in Section 5(3) read with Section 6 of the State Act. It was this view, which was reversed by this Court, following the judgments, which we have referred to which relate to conditional decrees. This result was arrived at by this Court, after finding that agreement to sell contemplated transfer of the land only after getting exemption. Clause (4) of the Agreement contemplated that the vendor was to obtain permission from the competent authority under the Urban Land Ceiling Act.

77. We need not multiply authorities. All that is necessary to notice and find is that when an agreement to sell is entered into, whereunder to complete the title of the vendor and for a sale to take place and the sale is not absolutely prohibited but a permission or approval from an Authority, is required, then, such a contract is, indeed, enforceable and would not attract the shadow of Section 23 of the Contract Act, 1872.

Certain other decisions

78. We may examine some of the decisions, which have been referred to by the respondents.

79. In the decision reported in *T. Dase Gowda* v. *D. Srinivasaiah*[13], a Division Bench of the High Court of Karnataka was considering the suit for specific performance in the context of the very Rules, which arise before us. The defendant/appellant in the said case, entered into an oral agreement with the plaintiff therein on 1-9-1981, to sell the suit site along with an incomplete structure. The defendant received certain amounts thereafter. This was followed by a written agreement on 1-10-1981 wherein the defendant agreed to sell. According to the plaint averments, the plaintiff was put in possession and he completed the construction. It was the plaintiff's further case that he was dispossessed by the defendant. The High Court, under Point 6, considered the question whether agreement was legally enforceable. The Court has referred to Rule 18 of the Rules, which, apparently, was invoked by the defendant. Answering the point, the Court took the view that there was no transfer of interest, which results from an agreement to sell and, therefore, Rule 18(2)(*a*)(*iii*), did not apply, as there was no alienation on a mere agreement to sell being executed. The Court distinguished the decision, which was relied upon by the defendant in the said case and, interestingly, the appellant before us viz. the

11 2020 SCC OnLine SC 825
12 *P. Gopirathnam* v. *Ferrodous Estate (P) Ltd.*, 2007 SCC OnLine Mad 101
13 1990 SCC OnLine Kar 613

decision of a learned Single Judge in *K. Chandrashekar Hegde* v. *Bangalore City Corpn.*[14]

80. We may further notice that the High Court in *T. Dase Gowda case*[13] took the view that a period of ten years had expired even during 1985 and there was no impediment with reference to the enforceability, it was further found. It was next found that the plaintiff in the said case was, on evidence, found residing in a rented house and that he had purchased the plaint scheduled property for self-occupation. It was found that the building which was constructed was a residential one. It was, therefore concluded that the element of public policy (public interest) was also not affected. The Court granted decree for specific performance.

81. In *Yogambika* v. *Narsingh*[15], a Division Bench, followed the decision in *T. Dase Gowda*[13], noting further that the earlier decision had been affirmed by this Court by the dismissal of the SLP by the order dated 17-7-1991. We may notice also that, in its discussion, the Division Bench, has laid store by the line of decisions commencing with *Motilal*[9].

82. In *Subbireddy* v. *K.N. Srinivasa Murthy*[16], the question fell for decision under Section 5(3) of the Karnataka Village Offices Inam Abolition Act. The Single Judge found that under the agreement, the transfer was to be effected only after the expiry of the period of non-alienation prescribed in Section 5(3) of the Act in question. This case must be understood in the light of the clause which contemplated the sale being effected, after the expiry of the period, during which, the alienation was prohibited. The vendor was to take permission for the execution of the sale deed.

83. In *Syed Zaheer* v. *C.V. Siddveerappa*[17], a Division Bench decreed a suit for specific performance wherein the agreement contemplated execution of sale deed, after the period of non-alienation prescribed under the grant. The suit was filed, in fact, after the lapse of the period of fifteen years.

84. In *Balwant Vithal Kadam* v. *Sunil Baburaoi Kadam*[18], this Court rejected the contention that the agreement, which was sought to be specifically enforced, fell foul of Section 48 of the Maharashtra Cooperative Societies Act. It was found that an agreement to sell did not create an interest in land unlike a sale.

85. In *Punjab & Sind Bank* v. *Punjab Breeders Ltd.*[19], this Court was dealing with a case of the effect of violation of the conditions, under which, a one-time settlement was extended. The conditions included the stipulation that the mortgaged property should not be sold for three years without prior permission, inter alia. An agreement to sell was found not to be a sale.

14 1987 SCC OnLine Kar 390 : ILR 1988 Kar 356
13 *T. Dase Gowda* v. *D. Srinivasaiah*, 1990 SCC OnLine Kar 613
15 1992 SCC OnLine Kar 1 : ILR 1992 Kar 717
9 *Motilal* v. *Nanhelal*, 1930 SCC OnLine PC 71 : AIR 1930 PC 287
16 2005 SCC OnLine Kar 460 : AIR 2006 Kar 4
17 2009 SCC OnLine Kar 601 : ILR 2010 Kar 765
18 (2018) 2 SCC 82 : (2018) 1 SCC (Civ) 604
19 (2016) 13 SCC 283 : (2017) 2 SCC (Civ) 433

86. In *Suraj Lamp & Industries (P) Ltd. (2)* v. *State of Haryana*[20], this Court, while dealing with the effect of what has been described as GPA sales in Delhi, inter alia, and considering the scope of an agreement to sell, declared that "*a transfer of immovable property by way of sale, can only be by a deed of conveyance (sale deed)*". No title is transferred by a mere agreement to sell, it was further found.

87. In *K. Chandrashekar Hegde*[14], which is relied upon by the appellant, a Single Judge of the High Court of Karnataka, was dealing with a batch of writ petitions. Among the issues, which prominently arose, was the objection taken to the construction of multi-storeyed buildings, wherein claims were made on the basis of allotment under the Act, as repealed by the Bangalore Development Act and the Rules. The learned Single Judge has elaborately considered the scheme of the Rules. He has further explored the impact of the forms prescribed under the Allotment Rules, 1964 and similar provisions were found in the subsequent Rules. This judgment has been distinguished by the judgment in *T. Dase Gowda*[13].

88. *Jambu Rao Satappa Kocheri* v. *Neminath Appayya Hanamannayar*[21] is an important decision. This Court was dealing with a suit for specific performance. One of the questions, which arose was whether the enforcement of the contract, would defeat the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. The appellant before this Court had agreed to sell 41 acres and odd of *jairayat* land. Under Section 5 of the Act, the ceiling area, inter alia, was prescribed as 48 acres of *jairayat* land. Section 34 of the Act provided as follows —

> "*Subject to the provisions of Section 35, it shall not be lawful, with effect from the appointed day, for any person to hold, whether as owner or tenant or partly as owner and partly as tenant, land in excess of the ceiling area.*"

89. Section 35 declared acquisition of land in excess of the area prescribed in Section 34, as invalid. Section 84-C, reads as follows:

> "**84-C.** ***Disposal of land transfer or acquisition of which is invalid.***—(1) Where in respect of the transfer or acquisition of any land made on or after the commencement of the amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in Section 84-B and decide whether the transfer or acquisition is or is not invalid.
>
> (2) If after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land is invalid, he shall make an order declaring the transfer or acquisition to be invalid.

20 (2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351
14 *K. Chandrashekar Hegde* v. *Bangalore City Corpn.*, 1987 SCC OnLine Kar 390 : ILR 1988 Kar 356
13 *T. Dase Gowda* v. *D. Srinivasaiah*, 1990 SCC OnLine Kar 613
21 AIR 1968 SC 1358

(3) On the declaration made by the Mamlatdar under sub-section (2)—

(*a*) the land shall be deemed to vest in the State Government, free from all encumbrances lawfully subsisting thereon on the date of such vesting, and shall be disposed of in the manner provided in sub-section (4); …"

90. The contention taken by the defendant in *Jambu Rao Satappa Kocheri case*[21] was that the plaintiff was already holding 31 acres and 2 guntas of *jairayat* land and, therefore, by acquiring the plaint scheduled property by way of the decree the plaintiff, would hold land in excess of the ceiling area. We may notice the following discussion with specific reference to Section 23 of the Contract Act, in particular: (*Jambu Rao Satappa Kocheri case*[21], AIR p. 1360, paras 6 & 8-9)

"*6. By Section 23 of the Contract Act, consideration or object of an agreement is unlawful if it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent.* Both the parties to the contract are agriculturists. By the agreement the appellant agreed to sell *jirayat* land admeasuring 41 acres 26 gunthas for a price of Rs 32,000. The consideration of the agreement per se was not unlawful, for there is no provision in the Act which expressly or by implication forbids a contract for sale of agricultural lands between two agriculturists. Nor is the object of the agreement to defeat the provisions of any law. The Act has imposed no restriction upon the transfer of agricultural lands from one agriculturist to another. It is true that by Section 35 a person who comes to hold, after the appointed day, agricultural land in excess of the ceiling, the lands having been acquired either by purchase, assignment, lease, surrender or by bequest, the acquisition in excess of the ceiling is invalid. The expression "acquisition of such excess land shall be invalid" may appear somewhat ambiguous. But when the scheme of the Act is examined, it is clear that the legislature has not declared the transfer or bequest invalid, for Section 84-C provides that the land in excess of the ceiling shall be at the disposal of the Government when an order is made by the Mamlatdar. The invalidity of the acquisition is therefore only to the extent to which the holding exceeds the ceiling prescribed by Section 5, and involves the consequence that the land will vest in the Government.

* * *

8. An agreement to sell land does not under the Transfer of Property Act create any interest in the land in the purchaser. By agreeing to purchase land, a person cannot be said in law to hold that land. It is only when land is conveyed to the purchaser that he holds that land. Undoubtedly the respondent was holding some area of land at the date of the agreement and at the date of the suit, but on that account it cannot be inferred that by agreeing to purchase land under the agreement in question his object was to hold in excess of the ceiling. It was open to the respondent to transfer or dispose of the land held by him to another agriculturist. The

21 *Jambu Rao Satappa Kocheri* v. *Neminath Appayya Hanamannayar*, AIR 1968 SC 1358

Act contains no general restrictions upon such transfers, and unless at the date of the acquisition the transferee holds land in excess of the ceiling, the acquisition to the extent of the excess over the ceiling will not be invalid. There is nothing in the agreement, nor can it be implied from the circumstances, that it was the object of the parties that the provisions of the Act relating to the ceiling should be transgressed. *The mere possibility that the respondent may not have disposed of his original holding at the date of the acquisition of title pursuant to* the agreement entered into between him and the appellant will not, in our judgment, render the object of the agreement such, that, if permitted, it would defeat the provisions of any law. *The Court, it is true, will not enforce a contract which is expressly or impliedly prohibited by statute, whatever may be the intention of the parties*, but there is nothing to indicate, that the legislature has prohibited a contract to transfer land between one agriculturist and another. The inability of the transferee to hold land in excess of the ceiling prescribed by the statute has no effect upon the contract, or the operation of the transfer. The statutory forfeiture incurred in the event of the transferee coming to hold land in excess of the ceiling does not invalidate the transfer between the parties.

9. We hold that a contract for purchase of land entered into with the knowledge that the purchaser may hold land in excess of the ceiling is not void, and the seller cannot resist enforcement thereof on the ground that, if permitted, it will result in transgression of the law." (emphasis supplied)

91. We may cull out the ratio in the following terms: *whatever may be intention of the parties, a contract which is expressly or impliedly prohibited by a statute, may not be enforced by the court.*

92. The Bombay Act did not prohibit a contract of sale of agricultural land between two agriculturists. The invalidity of the acquisition of land in excess, involved the consequence that the land would vest in the Government. In the context of the said Act, the Court in *Jambu Rao Satappa Kocheri case*[21] has taken the view that a person can be said to hold land only when it is conveyed to him, which would not take place when there is a mere agreement to sell. The further reasoning of the Court appears to be that it is open to the buyer to transfer or dispose of land already held by him to another agriculturist and unless at the date of acquisition, the buyer held the land in excess of the ceiling limit, the acquisition to the extent of the excess over the ceiling, would not be invalid. It was further declared that the mere possibility that the respondent/buyer may not have disposed of his original holding on the date of acquisition of title under the agreement to sell, would not render the object of the agreement such that, if permitted, it would defeat the provisions of any law. Thus, the contract was found to be not void.

21 *Jambu Rao Satappa Kocheri* v. *Neminath Appayya Hanamannayar*, AIR 1968 SC 1358

93. This judgment came to be followed in *Bhagat Ram* v. *Kishan*[22]. In the said case, the question arose under Section 23 of the Delhi Land Reforms Act, 1954, in a suit for specific performance. Section 23 reads as follows:

> "**23.** ***Use of holding for industrial purposes***.—(1) A bhumidhar or asami shall not be entitled to use his holding or part thereof for industrial purposes, other than those immediately connected with any of the purposes referred to in Section 22, unless the land lies within the belt declared for the purpose by the Chief Commissioner by a notification in the Official Gazette:
>
> Provided that the Chief Commissioner may, on application presented to the Deputy Commissioner in the prescribed manner, sanction the use of any holding or part thereof by a bhumidhar for industrial purposes even though it does not lie within such a belt."

94. This Court in *Bhagat Ram*[22] held as follows: (SCC p. 130, para 5)

> "*5*. Bhumidhari right is transferable and Defendant 1 is entitled to use the land even for the purpose other than those enumerated in Section 22 if he obtains permission of the Chief Commissioner. Therefore, the agreement for transfer of land does not become invalid by itself. Defendant 1 after obtaining the property could use it for the intended purpose on obtaining permission of the Chief Commissioner or if no such permission was obtained, he could use the land for the purposes authorised under Section 22 of the Act. In our opinion, the High Court went wrong in holding that the agreement was opposed to public policy or transfer under the agreement was hit by Section 23 of the Act. Support for our view is available from the decision of this Court in *Jambu Rao Satappa Kocheri* v. *Neminath Appayya Hanamannayar*[21]. The suit by the plaintiff for declaration that the agreement is bad had rightly been dismissed by the trial court as also the first appellate court and the High Court on an erroneous view reversed the same. In our opinion the suit is liable to be dismissed."

95. We have set out the provisions of the Rules and the lease-cum-sale agreement. Before we deal with the question as to whether the agreement in question, falls foul of Section 23 of the Contract Act, we shall deal with the contention raised by the respondent that there is no law, as understood in this case, which would be defeated by the agreement and what is holding the field is only the Rules.

96. It is true that this Court in *Union of India* v. *L.S.N. Murthy*[23], has observed as follows: (SCC pp. 723-24, para 17)

> "*17*. In Pollock & Mulla, *Indian Contract and Specific Relief Acts*, 13th Edn., Vol. I published by LexisNexis Butterworths, it is stated at p. 668:

22 (1985) 3 SCC 128
21 AIR 1968 SC 1358
23 (2012) 1 SCC 718 : (2012) 1 SCC (Civ) 368

> 'The words "defeat the provisions of any law" must be taken as limited to defeating the intention which the legislature has expressed, or which is necessarily implied from the express terms of an Act. It is unlawful to contract to do that which it is unlawful to do; but an agreement will not be void, merely because it tends to defeat some purpose ascribed to the legislature by conjecture, or even appearing, as a matter of history, from extraneous evidence, such as legislative debates or preliminary memoranda, not forming part of the enactment.'
>
> It is thus clear that the word "law" in the expression "defeat the provisions of any law" in Section 23 of the Contract Act is limited to the expressed terms of an Act of the legislature."

97. With respect, the principle laid down, does not commend itself to us. We do agree that the illegality cannot be a matter of conjecture nor the purpose divined by the Court from parliamentary debates. But that is not to say that as found by this Court in *Jambu Rao Satappa Kocheri* v. *Neminath Appayya Hanamannayar*[21], which decision was not considered by this Court, that it cannot be implied. But we must find that the Court was dealing with a notification, which was, in fact, a "letter" written by the Government of India. We can have no quarrel with the proposition that a "letter" cannot be law within the meaning of Section 23 of the Contract Act. The Court, in the said case, was not dealing with subordinate legislation in the form of statutory rules. The Rules in question before us are, undoubtedly, statutory rules. Therefore, we do not think it is necessary for us to refer the matter to a larger Bench on account of the observations found in the judgment in para 17. What is contemplated under Section 23 of the Contract Act is law, in all its forms, being immunised from encroachment and infringement by a contract, being enforced. Not only would a statutory rule be law within the meaning of Article 13 of the Constitution of India but it would also be law under Section 23 of the Contract Act.

98. Section 10 of the Contract Act declares as to what agreements are contracts and all agreements are declared contracts, if they are made by the free consent of parties competent to contract with a lawful consideration and with the lawful object and not expressly declared to be void under the Contract Act. Section 23 must be read with Section 10. Without the illustrations, Section 23, reads as follows:

> "**23.** ***What considerations and objects are lawful, and what not***.—The consideration or object of an agreement is lawful, unless—
>
> it is forbidden by law; or
>
> is of such a nature that, if permitted, it would defeat the provisions of any law; or
>
> is fraudulent; or
>
> involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

21 AIR 1968 SC 1358

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

99. The very first head under which an agreement becomes unlawful is, when the consideration or object of agreement is forbidden by law. In regard to the same, we may notice the view of a Bench of three learned Judges in *Gherulal Parakh* v. *Mahadeodas Maiya*[24]. Therein, quoting from Pollock and Mulla from their work Contract Act, this Court has stated as follows: (AIR p. 786, para 8)

> "*8.* … 'act or undertaking is equally forbidden by law whether it violates a prohibitory enactment of the legislature or a principle of unwritten law. But in India, where the criminal law is codified, acts forbidden by law seem practically to consist of acts punishable under the Penal Code and of acts prohibited by special legislation, *or by regulations or orders made under authority derived from the legislature*.' " (emphasis supplied)

100. In regard to the commentary by the very same author, under the second head of "illegal object or consideration" in Section 23 of the Contract Act viz. if the consideration or object is of such a nature that if permitted, it would defeat the provisions of any law, it is that, this Court took the view that law for the purpose of Section 23 would be, law made by the legislature. Quite apart from the fact that what is involved in the said case was only a letter, the judgment of this Court in *Gherulal Parakh*[24] and the Commentary from the very same author, was not noticed by this Court. Therefore, it becomes all the more reason as to why we need not refer the matter to a larger Bench. We may also notice that "law", for the purposes of clauses (1) and (2) cannot be different. It is very clear that Regulations or Orders made under the authority derived from the legislature referred to by this Court, are species of subordinate legislation. Statutory rules would also, therefore, clearly be law.

101. In the facts of this case, the question would, therefore, be, as to whether the enforcement of the agreement to sell dated 17-11-1982, expressly or impliedly, lead to palpably defeat the law in question, which is contained in the statutory rules or is prohibited by the same.

102. A contract may expressly or impliedly, be prohibited by provisions of a law. The intentions of the parties do not salvage such a contract. [See *Sobhag Singh* v. *Jai Singh*[25].] What is involved in this case, may not be a mere case of a conditional decree for specific performance being granted as was the case in the line of decisions commencing with *Motilal*[9] and ending with *Ferrodous Estates*[11]. The Rules contemplate a definite scheme. Land, which is acquired by the public authority, is meant to be utilised for the particular purpose. The

24 AIR 1959 SC 781
25 AIR 1968 SC 1328
9 *Motilal* v. *Nanhelal*, 1930 SCC OnLine PC 71 : AIR 1930 PC 287
11 *Ferrodous Estates (P) Ltd.* v. *P. Gopirathnam*, 2020 SCC OnLine SC 825

object of the law is to invite applications from eligible persons, who are to be selected by a committee and the sites are allotted to those eligible persons, so that the chosen ones are enabled to put up structures, which are meant to be residential houses.

103. It is implicit in the Rules, and what is more, in the lease-cum-sale agreement in the present case, that the allottee, who is treated as a lessee under Rule 7, will remain in possession and, what is more, proceed to fulfil his obligation under the lease-cum-sale agreement and the Rules. The obligations of the allottee/lessee are unambiguous. He has held himself out to be in dire need of a plot of land for the purpose of constructing a residential building. He has to disclose his annual income and any other means indicating his capacity, not only to purchase the site applied for but also to construct the house. He has to respond to the query as to whether any member of the family, of which he is a member, owns or has been allotted a site or a house by the Board or any other Authority, within the area under jurisdiction of the Board. The applicant must, furthermore, disclose whether he already owns a house or house site in the city or outside the city. Whether the applicant's wife, husband or minor child owns a house or house site, is another matter, he must disclose. Incorrect information in any of these matters, would entitle the Board to resume the site.

104. Rule 11 specifically announces among the principles as relevant for selecting an applicant for allotment, the income of the applicant to build the house on the site for his residence. No doubt, it is not applicable to certain classes, which include the Other Backward Classes. Rule 11(3) further declares that the number of years, the applicant has been waiting for allotment of a site, inter alia, as a relevant principle.

105. It may be true that as contended by Shri R. Basant, learned Senior Counsel for the respondent that despite the fact no building was put up by the allottee, BDA has not deemed it fit to cancel the allotment. We gather the impression that BDA has been lax in the pursuit of the lofty goals of the law. We do not pursue the matter further as BDA is not a party.

106. If the agreement between the plaintiff and the first defendant is taken as it is and it is enforced, the following would be the consequences. The allotment to the first defendant was made on 4-4-1979. In fact, the first defendant was obliged, in law, to construct a residential building within two years under Rule 17(6). No doubt, the time could be extended thereunder. But, at the time, the agreement dated 17-11-1982 was entered into, the first defendant was already in breach.

107. The result, however, of the agreement dated 17-11-1982, is as follows: the first defendant would be liable to convey the right in the site to the plaintiff. The price would be Rs 50,000 for the site, proceeding on the basis of the concurrent findings by the Court. This is on the supposition that the parties contemplated that the site would be conveyed after the period of ten years from the date of allotment upon the expiry of which alone, the allottee viz. the first defendant would be entitled to the conveyance under Rule 17(7) of the Rules. It must be noticed that in fact, under the lease-cum-sale agreement and the

Rules, what is contemplated is that on events leading up to the stage where the elements of Rule 17(7) are satisfied alone, a right or duty would accrue to the allottee/lie upon the party.

108. However, what is more important in the context of the facts of this case is the following facet:

108.1. Under the agreement, the parties contemplated and have expressly provided that the plaintiff was to be put in possession of the site on the date of the agreement i.e. on 17-11-1982. Did the parties contemplate the construction of the building residential in nature, for the purpose of which, the site was allotted to the first defendant? Is it not a clear case where enforcing the agreement, as it is, would necessarily result in the first defendant not acting in accordance with lease-cum-sale agreement, which, she entered into with BDA and, what is even more crucially important, against the mandate of the law, as contained in the Rules, which contemplated that the allotment was made for the construction of a residential building by the allottee and the construction was to be completed within the period of two years or an extended period?

108.2. The agreement between the parties contemplated giving a short shrift to the mandate of the law. This is clear from the fact that under the agreement, the first defendant was obliged to sell the site as it is. Construction of the building became a practical impossibility. *The price, which was agreed upon, was qua the site alone.* The consideration and the other terms of the agreement, in other words, ruled out the possibility of a residential building being constructed by the first defendant, who as the allottee, was, under the law, obliged to construct the building. Assuming for a moment that the construction was put up, which assumption must be premised on possession not being handed over to the plaintiff and which is contrary, not only to the terms of the agreement, but also pleading of the plaintiff and the consistent stand in the evidence adduced on behalf of the plaintiff and even proceeding, however, on the basis that as found by the trial court, that the plaintiff has failed to establish that possession was handed over to him on the date of agreement and that the possession continued with the first defendant, the terms of the agreement, which included, the price being fixed for conveying the right for the site, necessarily, would have the effect of freezing the first respondent in even attempting to put up a construction.

109. We, therefore, reject the contention of the plaintiff that there was nothing, which could have prevented putting up a building. The argument of the plaintiff involves rewriting of the contract. This is different from a situation where an allottee, without being trammelled by an agreement, is unable to put up a building even for the whole of ten years and action is not taken under Rule 17(6) and yet conveyance is made in his favour under Rule 17(7). The direct impact of the agreement is that it compelled the party to abstain from performing its obligation in law apart from breaching the agreement with BDA. In other words, taking the agreement as it is, it necessarily would be in the teeth of the obligation in law of the first respondent to put up the construction. The agreement to sell involved clearly terms which are impliedly prohibited by law

in that the first defendant was thereunder to deliver title to the site and prevented from acting upon the clear obligation under law. This is a clear case at any rate wherein enforcing the agreement unambiguously results in defeating the dictate of the law. The "sublime" object of the law, the very soul of it stood sacrificed at the altar of the bargain which appears to be a real estate transaction. It would, in other words, in allowing the agreement to fructify, even at the end of ten-year period of non-alienation, be a case of an agreement, which completely defeats the law for the reasons already mentioned.

110. Going by the recital in the agreement entered into between the plaintiff and the first defendant, possession is handed over by the first defendant to the plaintiff. The original possession certificate is also said to be handed over to the plaintiff. The agreement, even according to the plaintiff, contemplated that within three months of conveyance of the site in favour of the first defendant, the first defendant was to convey her rights in the site to the plaintiff. It is quite clear that the parties contemplated a state of affairs which is completely inconsistent with and in clear collision with the mandate of the law. On its term, it stands out as an affront to the mandate of the law.

111. The illegality goes to the root of the matter. It is quite clear that the plaintiff must rely upon the illegal transaction and indeed relied upon the same in filing the suit for specific performance. The illegality is not trivial or venial. The illegality cannot be skirted nor got around. The plaintiff is confronted with it and he must face its consequences. The matter is clear. We do not require to rely upon any parliamentary debate or search for the purpose beyond the plain meaning of the law. The object of the law is set out in unambiguous term. If every allottee chosen after a process of selection under the rules with reference to certain objective criteria were to enter into bargains of this nature, it will undoubtedly make the law a hanging stock.

112. To elucidate the matter a little further, let us take another example. If the agreement was entered into by the first defendant, under which, the first defendant would abide by her obligations, both under the lease-cum-sale agreement and, more importantly, the Rules and were to put up a building and the agreement contemplated, conveying the site along with the building, to a buyer after the expiry of ten years and upon getting the conveyance from BDA, such an agreement, perhaps, being not an alienation in itself, may have passed muster.

113. At this juncture, we must also deal with the argument of the plaintiff that the agreement to sell is not a sale and, what is prohibited under the Rules and lease-cum-sale agreement, was only alienation. There can be no quarrel with the proposition that no interest in property could be conveyed by a mere agreement to sell. But the question is, whether the agreement to sell in this case is in the teeth of Section 23 of the Contract Act. For reasons, which we have indicated, on a conspectus of the scheme of the Rules, we have no hesitation in holding that the contract was unenforceable for reason that it clearly, both expressly and impliedly, would defeat the object of the Rules,

which are statutory in nature. The contract was patently illegal for reasons already indicated.

114. Now, let us look at it from a different perspective. The agreement is dated 17-11-1982. We have noticed the correspondence by the plaintiff. We have also noticed the terms of the agreement between the plaintiff and the first defendant. In the first letter sent by the plaintiff which incidentally was within four months of the date of agreement, the plaintiff called upon the first defendant to execute the sale deed. There is no mention about the first defendant attempting to sell the property to anybody. It is noteworthy that the plaintiff has stated that he intends to sell the property to his nominee. This further indicates that he was not a person who was in need of this site for the purposes of putting up of residential building unlike even the plaintiff in the case considered by the High Court of Karnataka and relied upon by the plaintiff, namely, *T. Dase Gowda* v. *D. Srinivasaiah*[13].

115. We have already noticed the command of the law as contained in Rule 18(3) of the Rules read with Rule 17. If an allottee who is treated as a lessee for reasons which are indicated in Rule 18(3) wishes to sell the site (which is applicable in this case as no building has been put up) then he can sell the site only as was provided in Rule 18(3), that is to say, if going by the correspondence by the plaintiff wherein the first defendant was called upon to execute the sale deed of the site, this would be clearly in the teeth of Rule 18(3), the scope of which has already been explained. The plaintiff could not have asked for decree commanding the first defendant to sell the site in terms of the correspondence with which he began communicating with the first defendant. In other words, a sale of a site to any other person clearly stood prohibited and unless the allottee/lessee is compelled to sell in the circumstances mentioned in Rule 18(3) the law permitted the sale of the site only to the Authority itself. Therefore, if the plaintiff wanted to enforce the agreement for the sale of the site on an immediate basis it would clearly attract the embargo that it was completely prohibited.

Is the suit premature? Scope of Article 54 of the Limitation Act

116. The further question which is raised by the second defendant is that the suit itself was premature. We have found that the trial court has entered into a clear finding that there is absolutely no evidence to support the projected apprehension that the first defendant was about to dispose of the property. There is no material to support the finding otherwise. In fact, any such sale would have been completely illegal being prohibited by law as that is the inevitable and necessary implication flowing from Rule 18(3). There is absolutely no foundation for the plaintiff to have instituted the suit except perhaps the repudiation.

117. One of the contentions, which is raised by the learned counsel for the second defendant is that, under Article 54 of the Limitation Act, 1963, the period of limitation would begin to run from the time of repudiation of

13 1990 SCC OnLine Kar 613

the agreement to sell only when the contract does not provide for the time at which the contract is to be performed. In other words, the contention of the second defendant is that the agreement dated 17-11-1982, contemplated, even according to the plaintiff, in Clause 4 that the first defendant must convey the title within a period of three months from the date on which, BDA conveyed the title to her. According to the second defendant, therefore, in this case, the time for performance of the obligation by the vendor, was fixed. Therefore, there was no need for the plaintiff and, what is more, no justification for the plaintiff, to institute the suit prematurely, almost four years prior to the appointed date.

118. Article 54 of the Limitation Act, reads as follows:

"*54.* For specific performance of a contract.	3 years.	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

Article 54 contemplates that when a date is fixed for the performance of the contract, then, the period of limitation begins to run from that date. When such a date is not fixed in an agreement to sell, then, refusal or breach by the vendor will start the clock ticking.

119. However, we may notice, in this regard, what the Court has opined. In *Ramzan* v. *Hussaini*[26], a Bench of two learned Judges of this Court took the view that the word "date" in Article 54, need not be expressly mentioned in an agreement and it can be found out from the other terms of the agreement. If this were so, there may be merit in the second defendant's contention.

120. In a later decision, a Bench of three learned Judges in *Ahmadsahab Abdul Mulla (2)* v. *Bibijan*[27], has, however, taken the view that the word "the date" in Article 54, means that the specific date must be indicated in an agreement as the date of performance. No doubt, the Court, in fact, went on to distinguish the earlier decision *Ramzan* v. *Hussaini*[26] and held as follows: (*Bibijan case*[27], SCC pp. 464-66, paras 5, 8 & 11)

> "*5.* In *Tarlok Singh case*[28] the factual scenario was noticed and the case was decided after referring to Article 54 of the Schedule to the Act. *Ramzan case*[26] related to the specific performance of contingent contract. It was held (at SCC p. 104) that the expression 'date fixed for performance' 'need not be ascertainable in the face of the contract deed and may be ascertainable on the happening of a certain contingent event specified in the contract'.
>
> * * *

26 (1990) 1 SCC 104
27 (2009) 5 SCC 462 : (2009) 2 SCC (Civ) 555
28 *Tarlok Singh* v. *Vijay Kumar Sabharwal*, (1996) 8 SCC 367

8. The judgments in *Ramzan*[26] and *Tarlok Singh*[28] cases were rendered in a different factual scenario and the discussions do not throw much light on the controversy at hand.

* * *

11. The inevitable conclusion is that the expression "date fixed for the performance" is a crystallised notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances."

121. No doubt, the Court in *Ahmadsahab Abdul Mulla case*[27] took the view, inter alia, that the judgment in *Ramzan* v. *Hussaini*[26], was a case of a contingent contract. It could still be argued that the rights of the defendant were only that, if all went well, and BDA conveyed the title to her, she was to convey her rights within a period of three months. We would think that in the facts of this case, we need not disturb the finding of the High Court particularly when we find that the contract itself is unenforceable.

Is it a new case?

122. Yet another objection raised by the plaintiff is that the Court must not permit the plea of the appellant that the contract was void or that it was unenforceable and that it is a new point. Quite apart from the fact and ignoring even the same that before the trial court, the second additional issue was, as to whether the contract was void but not ignoring the first point which was raised by the High Court, which was as to whether the suit was maintainable, wherein the High Court has discussed the matter, it appears to us to be a question of law, which is to be applied to facts, which are not in dispute and, therefore, we reject the said contention. Even absent a plea by the defendant, illegality, by putting the contract side by side with the Rules, is writ large.

Impact of absence of prayer questioning repudiation by the first defendant

123. The second defendant has raised a contention that since the first defendant has repudiated the contract and as the plaintiff has not prayed for a declaration that the repudiation was bad, the suit would not lie.

124. Reliance is placed on the judgment of this Court in *I.S. Sikandar* v. *K. Subramani*[29]. In the said judgment, we find that this Court has taken the view that when the vendor has cancelled the agreement, it is incumbent upon the

26 *Ramzan* v. *Hussaini*, (1990) 1 SCC 104
28 *Tarlok Singh* v. *Vijay Kumar Sabharwal*, (1996) 8 SCC 367
27 *Ahmadsahab Abdul Mulla (2)* v. *Bibijan*, (2009) 5 SCC 462 : (2009) 2 SCC (Civ) 555
29 (2013) 15 SCC 27 : (2014) 4 SCC (Civ) 365

vendee to seek a declaration that the cancellation was illegal. This is what the Court has held: (*I.S. Sikandar case*[29], SCC pp. 37-38, paras 36-37)

> "*36*. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the agreement of sale was terminated as per notice dated 28-3-1985 and thus, there is termination of the agreement of sale between the plaintiff and Defendants 1-4 w.e.f. 10-4-1985.
>
> *37*. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law."

125. The said view has been followed in the judgment of this Court reported in *Mohinder Kaur* v. *Sant Paul Singh*[30]. We do not however need to rest our decision to non-suit the plaintiff on this score in view of our finding that the agreement dated 17-12-1982 should not be enforced.

Lis pendens

126. The doctrine of lis pendens is based on the maxim "*pendente lite nihil innovetur*". This means that pending litigation, nothing new should be introduced. Section 52 of the Transfer of Property Act, 1882 (for short "the TP Act"), which incorporates the doctrine of lis pendens, is based on equity and public policy. It pours complete efficacy to the adjudicatory mechanism. This is done by finding that any disposition of property, as described in the Section by a party to the litigation will, in not any way, detract from the finality of the decision rendered by the court. It is clear that it is not based on the ground of notice as laid down by Lord Cranworth in *Bellamy* v. *Sabine*[31], which has been followed by the Privy Council in the decision in *Faiyaz Husain Khan* v. *Munshi Prag Narain*[32].

127. We may notice the following discussion in this regard in *The Transfer of Property*, by Mulla, 12th Edn.:

> "The rule is, therefore, based not on the doctrine of notice, but on expediency i.e. the necessity for fine adjudication. It is immaterial whether the alienee *pendente lite* had, or had not, notice of the pending proceeding. This is, of course, no longer the case in England, or in Gujarat and Maharashtra, where the doctrine only affects transactions *pendente lite* if the *lis* has been duly registered."

128. It is further important to notice that when a transaction is done, lis pendens or pending a case, the transaction is, as such, not annulled. The

29 *I.S. Sikandar* v. *K. Subramani*, (2013) 15 SCC 27 : (2014) 4 SCC (Civ) 365
30 (2019) 9 SCC 358 : (2019) 4 SCC (Civ) 415
31 (1857) 1 De G & J 566 : 44 ER 842
32 1907 SCC OnLine PC 6 : (1906-07) 34 IA 102

transaction is, in other words, not invalidated. In fact, as between the transferor and the transferee, it does not lie in the mouth of the transferor to set up the plea of lis pendens to defeat the disposition of property. Equally, the principle of lis pendens is, not to be confounded with the aspect of good faith or bona fides. In other words, the transferee or the beneficiary of the property, which is disposed of by a party, cannot set up the case that he acted bona fide or in good faith. This enables the court and the parties in a suit or a proceeding, which otherwise is in conformity with requirements of Section 52, to proceed in the matter on the basis that the adjudication by the court, will not, in any way, be subverted or delayed, when the day of final reckoning arrives.

129. The cardinal and indispensable requirement, which flows both from Section 52 and the principle, it purports to uphold, is that the transfer or dealing of the property, which is the subject-matter of the proceeding, is carried out by a party to the proceeding. Section 52 uses the word "party" twice. It refers to the disability of a party to transfer or otherwise deal with the property, pending adjudication. This embargo is intertwined with the beneficiary of the veto against such transfer, being any other party thereto. In fact, the Special Bench of the Madras High Court in *Manjeshwara Krishnaya* v. *Vasudeva Mallya*[33], puts the doctrine of lis pendens as an extension of the doctrine of res judicata. Thus, the sine qua non for the doctrine of lis pendens to apply is that the transfer is made or the property is otherwise disposed of by a person, who is a party to the litigation. The doctrine of lis pendens, only subject, however, the transfer or other disposition of property to the final decision that is rendered. The person/party, who finally succeeds in the litigation, can ask the court to ignore any transfer or other disposition of property by any party to the proceeding. This is subject to the condition that transfer or other disposition is made during the pendency of the lis.

130. The first defendant died pending the suit on 6-8-1994. Her death was reported before the Court on 16-1-1995. The plaintiff brought on record, the husband of the first defendant by the order dated 25-8-1995, as Defendant 1(*a*). Defendant 1(*b*), who is the son of the second defendant, sold the property on 19-9-1996, in favour of the appellant. It is thereafter that on 9-4-1997, the predecessor-in-interest of the appellant viz. the son of the first defendant, and the second defendant were impleaded on 9-4-1997. The transfer made in favour of the second defendant was, therefore, made at a time, when the son of the first defendant was not a party to the suit. Therefore, it is that the contention was taken before the trial court successfully by the appellants that the transfer in favour of the appellant was not hit by the doctrine of lis pendens.

131. The High Court in the impugned judgment[1] reversed this finding. The High Court, in doing so, employs, inter alia, the following reasoning: (*Y. Subba Raju case*[1], SCC OnLine Kar para 93)

> "*93*. The position of law with regard to the rights and obligation of a dead person can be succinctly stated thus:

33 1917 SCC OnLine Mad 141 : AIR 1918 Mad 578
1 *Y. Subba Raju* v. *Jayalakshmamma*, 2016 SCC OnLine Kar 8982

The rights which a dead man thus leaves behind him vests in his representative. They pass to some person whom the dead man, or the law on his behalf, has appointed to represent him in the world of the living. This representative bears the person of the deceased, and therefore, has vested in him all the inheritable rights, and has imposed upon him all the inheritable liabilities of the deceased. Inheritance is in some sort a legal and fictitious continuation of the personality of the dead man, for the representative is in some sort identified by the law with him whom he represents. The rights which the dead man can no longer own or exercise in propria persona, and the obligations which he can no longer *in propria persona* fulfil, he owns, exercises, and fulfils in the person of a living substitute. To this extent, and in this fashion, it may be said that the legal personality of a man survives his natural personality, until, his obligations being duly performed, and his property duly disposed of, his representation among the living is no longer called for. Just as many of a man's rights survive him, so also do many of his liabilities; and these inheritable obligations pass to his representative, and must be satisfied by him.

As far as the estate of a dead man is concerned, there are two class of persons who are entitled to it, namely, creditors and beneficiaries. A beneficiary possesses a dual capacity, while he may benefit by inheriting the dead man's estate is also liable to the dead man's obligations. He survives even after his death, especially the obligations concerning immovable property. The beneficiaries who are entitled to the residue after satisfaction of the creditors, are of two classes: (1) those nominated by the last will of the deceased and (2) those appointed by the law in default of any such nomination. They succeed respectively by testamentary succession (ex testamento) or intestate succession (ab intestate) (source: *Salmond on Jurisprudence*, Twelfth Edn., P.J. Fitzgerald).

Section 2(11) of the Code of Civil Procedure, 1908 (CPC) defines *legal representative* to mean a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The aforesaid definition is both exhaustive as well as an inclusive definition. It is exhaustive in the sense that a legal representative means a person who in law represents the estate of the deceased."

132. Thereafter, the High Court proceeded to consider the distinction between a legal representative as defined in Section 2(11) of the Code of Civil Procedure, 1908 and legal heirs. Still further, the Court also considered the scheme of Order 22 CPC and finally proceeds to find as follows: (*Y. Subba Raju case*[1], SCC OnLine Kar paras 94-95)

"*94.* … Even though Defendant 1(*b*) was not arrayed along with his father as a legal heir of the deceased Defendant 1, the fact remains that the estate of Defendant 1, which also includes the suit schedule property was represented through Defendant 1(*a*), the husband of Defendant 1.

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Therefore, the contention that the sale that was made by Defendant 1(*b*) in favour of Defendant 2 when Defendant 1(*b*) was not a party to the suit is not subject to any direction that may be issued in the suit, and that Section 52 of the Act would not apply in the instant case is not a correct understanding of the position of law. Further, in the instant case, Defendant 1(*a*) also did not inform the trial court that his son was also a legal representative of deceased Defendant 1 and therefore, he also ought to be brought on record as the heir of the deceased Defendant 1 when the application was filed by the plaintiff to bring only him on record as legal heir of deceased Defendant 1. Therefore, it is held that in the instant case, the estate of Defendant 1 was represented through Defendant 1(*a*) in the suit and that the alienation made by Defendant 1(*b*) to Defendant 2, even in the absence of Defendant 1(*b*) being made a party to the suit has no significance.

95. That apart, it is also noted from the evidence of Defendant 2, who has deposed as DW 1, that when the talks for the sale of the suit property took place in June, 1996, Defendant 1(*a*) along with Defendant 1(*b*) and the broker Battanna were present. The reason as to why Defendant 1(*a*) did not disclose about the pendency of the suit when he was by then arrayed as the legal heir of deceased Defendant 1 in the said suit is for obvious reasons. Defendant 1(*a*) did not disclose about the pendency of the suit to Defendant 2 only with an intention to deprive the right of the plaintiff in the suit property i.e. by creating third party rights in the said property. Also, it cannot be believed that Defendant 1(*b*), though not arrayed as a legal representative of deceased Defendant 1 (his mother) at that point of time was totally unaware about the pendency of the suit. The legal heirs of deceased Defendant 1, namely, her husband and only son resided at the same address. Therefore, constructive, if not actual, notice has to be attributed to Defendant 1(*b*) regarding the pendency of the suit. By selling the same to Defendant 2 would result in plaintiff's right being jeopardised. As already noted from the evidence of DWs 1 and 2, talks for the sale of the suit site by Defendants 1(*a*) and 1(*b*) were held with Defendant 2 in the first week of June, 1996. In fact, at that point of time, BDA had not yet conveyed the site in the name of Defendant 1(*b*). BDA did so only on 14-6-1996."

133. The High Court has relied on the decision of the Madras High Court in *Nallakumara Goundan* v. *Pappayi Ammal*[34]. In the said case, after the death of the party, a legal representative disposed of the plaint scheduled property within the period provided for substituting the dead person with the legal representative. It was in the said context held by the Madras High Court as under: (*Pappayi Ammal case*[34], SCC OnLine Mad para 6)

"*6*. … The same principle should, I think, apply to a case where as here the original defendant died and the alienation was made after his death and before the filing of the application to bring his legal representative on record. The suit must be deemed to be pending against the legal persona

34 1944 SCC OnLine Mad 298 : AIR 1945 Mad 219

of the deceased i.e. against his legal representative and must be deemed to continue until at least the expiration of the time limited by any law of limitation to bring him on record. Whether if an application is made long after the expiration of the time fixed for bringing the legal representative on record and an alienation is made by the legal representative and later on the plaintiff in the action seeks to set aside the abatement and to bring the legal representative on record, and that is ordered, the doctrine of lis pendens applies or not does not arise and need not be considered. There may be difficulties in such a case, but where the alienation is made within the time prescribed for bringing the legal representative on record, it is a clear case and there can be no doubt whatever that the rule does apply."

134. Thereafter, the Court concluded that in the circumstances, Section 52 of the TP Act squarely applied.

135. It would appear that the High Court has, in arriving at the finding that the transfer in favour of the appellant is hit by lis pendens, taken into consideration the doctrine of notice/constructive notice. We have already observed that the doctrine of notice and constructive notice would be inapposite and inapplicable. Neither the fact that the transferee had no notice nor the fact that the transferee acted bona fide, in entering into the transaction, are relevant for applying Section 52 to a transaction. This is unlike the requirement of Section 19(1)(*b*) of the Specific Relief Act whereunder these requirements are relevant.

136. The decision of the Madras High Court in *Nallakumara Goundan*[34] turned on in its own facts as indicated by the said Court itself. In other words, that was a case where even within the period of limitation for substitution of the legal representative of a deceased party in a suit, the legal representative purported to deal with the property. It was in the said context that the Court proceeded to hold that lis pendens would apply. In this case the transfer in favour of the second defendant took place on 16-9-1996. The vendor and the vendee, namely, Defendant 1(*b*) and the second defendant were not parties on the date of the transaction. They were impleaded only almost one year thereafter. No doubt we are not oblivious to the role played by Defendant 1(*a*), namely, the husband of the first defendant who gave his "no objection" to the assignment of the entire rights in favour of his son, namely, Defendant 1(*b*) without which BDA could not have assigned the right in favour of Defendant 1(*b*). Though not urged by the plaintiff, could it be said that as Defendant 1(*a*) was already a party and this must be treated as a case were Defendant 1(*a*) as "otherwise dealt" with the property within the meaning of Section 52 without which the title would not vest in Defendant 1(*b*).

137. A transfer which is made lis pendens it is settled law, is not a void document. It does create rights as between the parties to the sale. The right of the party to the suit who conveys his right by a sale is extinguished. All that Section 52 of the Transfer Property Act provides is that the transfer which is

34 *Nallakumara Goundan* v. *Pappayi Ammal*, 1944 SCC OnLine Mad 298 : AIR 1945 Mad 219

made during the pendency of the proceeding is subjected to the final result of the litigation.

138. Even assuming for a moment that the conduct of Defendant 1(*a*), the father of Defendant 1(*b*), in giving a no objection and thereby enabling Defendant 1(*b*) to derive the title exclusively to the property and which title stood conveyed to the second defendant attracted, the principle of lis pendens, it would still not invalidate the sale. At best, the plaintiff can contend that, should he be entitled for a *decree of performance* the sale in favour of the second defendant should be subjected to such decree. As far as the transfer is made by Defendant 1(*b*) to the second defendant in his own right and insofar as Defendant 1(*b*) was not a party and by the time the sale was effected the period of limitation for impleading Defendant 1(*b*) had already clearly expired even the principle laid down in the decision of the Madras High Court would not apply and the High Court was not correct in finding that the sale by Defendant 1(*b*) in favour of the second defendant was hit by lis pendens.

Is the second defendant, a bona fide purchaser?

139. The trial court has found that the second defendant is a bona fide purchaser. The High Court holds otherwise. The purchase of the suit site is purported to be made by the second defendant on 17-9-1996. The High Court, after going through the evidence, enters the following findings:

139.1. The negotiations took place first time in June 1996 and, at that time, the suit was pending. BDA has not yet registered the conveyance in favour of Defendant 1(*b*). Even before BDA executed the sale deed in favour of Defendant 1(*b*), he had decided to enter into the agreement. The conveyance in favour of Defendant 1(*b*) was entered only on 14-6-1996 and he executed the sale deed in favour of the second defendant on 19-9-1996. The second defendant has deposed that he met not just DW 2 along with the broker but he had also met the father of DW 2 viz. Defendant 1(*a*), who was arrayed as the legal representative of the first defendant. Only photocopies of documents were given to the second defendant before the sale. Defendant 2 did not make any inquiry about the original. It must be presumed that the second defendant had notice of the agreement to sell the site in respect of which the decree for specific performance was sought.

139.2. The Court, then, referred to Section 3 of the TP Act and brings in the concept of constructive notice. Had the second defendant made inquiries with regard to the original possession certificate, the truth would have been revealed. Much is said about no inquiry is being made about the original possession certificate. The High Court notes that the agreement to sell with the plaintiff is not registered but, again, it draws inference from absence of inquires by the second defendant about why the original possession certificate was not handed over to him. The fact that Defendant 1(*a*) did not reveal to the second defendant about the pendency of the suit, is, on the one hand noted but the Court holds that even then, the second defendant ought to have made inquiry about pendency of any litigation. The fact that second Defendant 1(*b*) as DW 2 admitted that he had no material to support the fact that he had received Rs 4,50,000, was very valuable in mid-1990s, if considered.

139.3. The Court questions the idea that the second defendant who was only 20 years of age and involved in agricultural operations and milk-vending business, who had no intention of settling in Bangalore, would have thought of purchasing a site in Bangalore. The amount of consideration was not deposited in any bank. The Court proceeds to hold that on an overall reappreciation, it was found that he was not a bona fide purchaser for value without notice. Thereafter, the High Court further proceeds to pose the question as to why the second defendant, who is the resident of Nagamangala Taluk, engaged in agricultural operation and milk-vending business, should enter into an agreement in Bangalore, that too, when he is 20 years old. Betanna, the alleged broker, was not examined. Thereafter, the High Court proceeds to even find that the entire transaction between Defendant 1(*b*) and the second defendant is a sham transaction, made only to defeat the plaintiff.

139.4. In the next paragraph, however, applying Sections 3 and 54 of the TP Act, it is again found that the second defendant is not a bona fide purchaser for value. Finally, it was found, by answering Point 2, that the second defendant is not a bona fide purchaser for value without notice of the agreement to sell in favour of the plaintiff.

140. We must, in the first place, notice that on a perusal of the plaint, even after the amendment, there is no case set up by the plaintiff that the sale deed executed in favour of the second defendant, is a sham transaction. A sale deed, which is a mere sham and a purchase, which is not bona fide, are two different things. In the case of sham transaction, no title is conveyed to the purchaser. In the case a sale transaction, which is not a sham, the title of the transfer is, indeed, conveyed to the transferee. A purchase may be bona fide or not bona fide. In a sale, which is not a bona fide, words "bona fide sale", are used in the context of pending suit and from the point of view of Section 19(1)(*b*) of the Specific Performance Act. It is difficult to dub it as a sham transaction. A transaction cannot be a sham transaction and a sale, which is afflicted with absence of bona fides, at the same time. Even proceeding on the basis that the second defendant was not a bona fide purchaser, it is not the same thing as holding that it is a sham transaction.

141. In the plaint, which was amended, the plaintiff has averred, inter alia, as follows:

> "10C. The plaintiff submits that taking advantage of the fact that the son was not on record, the husband accorded no objection in favour of BDA so as to ensure that the sale deed was executed in favour of H.K. Sudarshan alone and thereafter the second legal representative sold the schedule property in favour of the second defendant. The plaintiff submits that the defendants are aware of the pendency of the suit and of the subsistence of the agreement of sale in favour of the plaintiff. The sale deed executed in favour of the said person i.e. the second defendant is hit by the doctrine of lis pendens and the second defendant's title to the schedule property is subject to the outcome of the present suit.

10D. The plaintiff submits that the second defendant is not a bona fide purchaser for value. The sale in favour of the second defendant is with the sole intention of complicating the matters in controversy and to prejudice the case of the plaintiff. Therefore, the plaintiff submits that the sale deed executed in favour of the second defendant does not in any way restrict the right of the plaintiff to seek specific performance of the agreement of sale executed in favour of the plaintiff."

142. Therefore, we are inclined to hold, in the first place that the High Court erred in finding that the transaction was a sham transaction. As far as the question, as to whether the second defendant was not a bona fide purchaser, it is the case of the second defendant that the High Court has erred in not noticing that in the evidence, the second defendant deposed that his vendor disclosed to him that the original possession certificate was lost and produced duplicate possession certificate. This evidence is incongruous with the finding of the High Court that the second defendant had not made any inquiry as to why the original possession certificate was not handed over.

143. The second defendant had deposed about inquiry being made and being informed that the original possession certificate was lost. The second defendant further complains that the High Court itself has found that the vendor of the second defendant has admitted that no information was given to the second defendant regarding the pendency of the suit and, therefore, the High Court has erred in reversing the finding of the trial court, which had found that inquiry as contemplated in Section 3 of the TP Act had been made by the second defendant for purchasing the property. The second defendant had visited the site. The finding based on the defendant being 20 years old or the husband of the vendor, being an MLA, was pointed out to be irrelevant. It is further the case of the second defendant that construction was made and he is living in the property since more than 17 years. The value of the property is stated to be about Rs 2.5 crores.

144. Per contra, the learned Senior Counsel for the plaintiff would support the finding of the High Court. It was pointed out that the High Court is the final fact-finding Court.

145. We have already found that the sale in favour of the second defendant is wrongly found to be a sham transaction, a case, which even the plaintiff did not have. If it is not a sham transaction and the issue is, as to whether the second defendant, is not a bona fide purchaser, the following aspect looms large.

146. We have already found that the agreement to sell dated 17-11-1982, is to be painted with the brush of illegality and pronounced unenforceable. It is undisputed that the plaintiff has paid Rs 50,000 on the strength of the said agreement. It would appear to be true that a part of this amount was received on the date of the agreement. It may be true that further amount were received by Defendant 1(*a*), the husband of the first defendant. The first defendant died pending the suit. It is while the suit was pending that Defendant 1(*b*), the son of the first defendant, had executed the sale deed on 16-9-1996 in favour of the second defendant. It is again undisputed that at the time when the sale deed was executed, both the second defendant and his vendor, Defendant 1(*b*), were not parties in the suit. We have already found that the sale deed in favour of the second defendant, cannot be treated as a sham transaction and the finding, in fact, on Point 2 by the High Court, also that the second defendant is not a bona

fide purchaser. Once we come to the conclusion that the agreement, relied upon by the plaintiff, cannot be enforced, as to whether, even proceeding on the basis that the sale in favour of the second defendant was made, not in circumstances which would entitle the second defendant to set up the case that he is a bona fide purchaser, the question of granting relief to the plaintiff must first be decided.

147. In other words, in view of the illegality involved in enforcing the agreement dated 17-11-1982, the question would arise, whether, on principles, which have been settled by this Court, the Court should assist the plaintiff or the defendant. We have noted the state of the evidence, in particular, as it is revealed from the deposition of PW 2. We have found that the agreement, relied upon by the plaintiff, cannot be acted upon. In such circumstances, we would think that, even if we do not reverse the finding of the High Court that the second defendant is not a bona fide purchaser, it will not itself advance the case of the plaintiff. This is for the reason that his case is in the teeth of the law, as found by us, making it an unenforceable contract. The plaintiff is seeking the assistance of the Court which must be refused.

148. We, therefore, need not explore further the complaint of the second defendant that the High Court erred in arriving at the finding that the second defendant was not a bona fide purchaser.

Not a case under Article 136?

149. Is it a case which should not be allowed under Article 136? The argument of the plaintiff is that having regard to the facts as it emerges this is not a fit case for this Court to exercise its jurisdiction which originated from grant of special leave under Article 136. It is undoubtedly true that at both the stages, namely, while granting special leave and also even after special leave has been granted under Article 136 that is when the Court considers an appeal the Court would not be oblivious to the special nature of the jurisdiction it exercises. It is not axiomatic that on a case being made otherwise that the Court would interfere. The conduct of the parties and the question as to whether interference would promote the interests of justice are not irrelevant considerations. Being the final court, it is not without reason that this Court is accordingly also clothed with the extraordinary powers under Article 142 to do complete justice between the parties.

150. There is another aspect which is also projected by the plaintiff which must receive our attention. The plaintiff sought to persuade us should the Court find the agreement to sell unenforceable for the reason that it falls foul of Section 23 of the Contract Act, it may declare the law but not interfere with the judgment[1] of the High Court.

151. We are of the view that on both these grounds we are not with the plaintiff. It is not a case where the condition of the plaintiff is such that the interests of justice would overwhelm our findings that the agreement relied upon by the plaintiff constituted a clear intrusion into the requirement of the law.

152. In fact, we would consider the contract an open and brazen instance of the parties entering into a bargain with scant regard for the law. If that were not enough, the very first letter addressed to the first defendant dated 1-3-1983 betrays the real purpose of the contract. The plaintiff in no uncertain terms has

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declared his intention to sell the property to his nominee. It is clear as daylight that the plaintiff had no intention whatsoever to make use of the site for the purpose of putting up a residential building. The communications indicate that the plaintiff was a contractor. The evidence of PW 2 his son further indicated that he has been in the business since 1960. What is even more revealing is the admission relating to the properties belonging to or in the possession of the plaintiff and his family members which we have dealt with. The final nail in the coffin, as it were, is driven home in the case by showing the case of the plaintiff in its true colours when PW 2 deposed that if the suit is dismissed it would occasion "a monetary loss".

153. Thus, the bargain was to buy up precious public land which was vested with the Bangalore Development Authority by acquiring it from some person with the laudable object of housing a homeless person in Bangalore. The result of the agreement being enforced would be to clearly frustrate the object of the law and make the site the subject-matter of a property deal with the object of making a profit.

154. The upshot of the above discussion is, we must hold that the High Court has clearly erred in holding that the suit was maintainable. We would find that the suit to enforce the agreement dated 17-11-1982, should not be countenanced by the Court.

155. Then, the question would arise, as to the final order to be passed in the facts. While, we are inclined to overturn the impugned judgment[1] by holding that the suit itself, was not maintainable, we must notice that the High Court had decreed the suit on the appeal by the plaintiff. The defendants did not challenge the decree of the trial court. Therefore, the setting aside of the judgment[1] of the High Court would not result in dismissal of the suit. What is more, we are of the further view that to do complete justice between the parties, while we allow the appeals, we must pass an order, which will result in a fair amount being paid to the plaintiff.

156. Having regard to the entirety of the evidence and the conduct of the parties, noticing even the admitted stand of the second defendant that the plaint scheduled property has a value of Rs 2.5 crores and the plaintiff has paid, in all, a sum of Rs 50,000, which constituted the consideration for the agreement to sell several years ago, while we dismiss the suit for specific performance, we should direct the appellants to pay a sum of Rs 20,00,000 in place of the decree of the trial court.

157. Accordingly, the appeals are allowed. The impugned judgment[1] shall stand set aside. The suit for specific performance will stand dismissed. There will be a decree, however, for payment of Rs 20,00,000 (Rupees twenty lakhs) by the appellants to the respondents (the legal representatives of the plaintiff) within a period of three months from today. If the aforesaid amount is not paid as aforesaid, the appellants shall be liable to pay interest @ 8% p.a. after the expiry of 3 months from today on the said amount as well. The parties are directed to bear their respective costs.

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(BEFORE DR B.S. CHAUHAN AND S.A. BOBDE, JJ.)

K.N. ASWATHNARAYANA SETTY (DEAD) THROUGH LEGAL REPRESENTATIVES AND OTHERS . . Petitioners;

Versus

STATE OF KARNATAKA AND OTHERS . . Respondents.

SLPs (C) No. 22311 of 2012† with Nos. 22307-309 of 2012, decided on December 2, 2013

A. **Property Law — Transfer of Property Act, 1882 — S. 52 — Doctrine of lis pendens — Applicability — Non-effect of absence of interim order by court — Held, transferee pendente lite is bound by decree passed by court — Merely because there is no interim order passed by court in pending litigation, person would not get right to purchase property during pendency of litigation and contend that he would not be bound by decree of court — In present case, petitioners had purchased suit land when matter relating to de-notification of land from acquisition under S. 48(1) of Land Acquisition Act, 1894 was pending before Supreme Court — Supreme Court subsequently quashed order of de-notification — Held, petitioners were bound by this final order of Supreme Court — Plea that as there was no interim order passed by Supreme Court, petitioners could purchase suit land during pendency of litigation and were not bound by order of Supreme Court, rejected — Land Acquisition Act, 1894 — Ss. 48(1), 4 and 6**

B. **Land Acquisition Act, 1894 — Ss. 4 and 6 — Sale of land after initiation of acquisition proceedings — Restrictions on such sale — Enactment of relevant statutes by various State Governments making such sale punishable except when done with permission, noted**

C. **Land Acquisition Act, 1894 — Ss. 48(1), 16, 17, 4 and 6 — De-notification under S. 48(1) — Non-permissibility of after possession of land is taken — Held, once possession of acquired land is taken, same vests in the State free from all encumbrances and thereafter it cannot be divested — Hence, de-notification under S. 48(1), cannot be made after this stage — On facts, where possession of acquired land was taken and handed over to respondent Society, beneficiary of the acquisition, held, question of de-notifying the land from acquisition could not arise**

The State Government issued a notification under Sections 4(1) and 6 of the Land Acquisition Act, 1894 on 6-8-1991 and 15-5-1992 respectively, to acquire huge chunk of land admeasuring 15 acres for the benefit of the respondent Society. However, at the behest of the then owners of the suit land, the Government vide order dated 5-8-1993 de-notified the land from acquisition issuing notification under Section 48(1) of the LA Act. Aggrieved, the respondent Society challenged the de-notification order by filing writ petition before the High Court. The Single Judge as well as the Division Bench in appeal rejected the said challenge. The Supreme Court vide judgment dated 11-12-2000 allowed the appeal of

† From the Judgment and Order dated 24-10-2011 of the High Court of Karnataka at Bangalore in WA No. 1421 of 2008

the respondent Society and quashed the order de-notifying the suit land from acquisition.

During the pendency of the appeal before the Supreme Court, the present petitioners purchased the suit land and approached the State Government to de-notify the said land from acquisition. As their applications for release were not dealt with by the Government, they preferred writ petitions before the High Court which directed the Government to decide these applications. In pursuance of the High Court's order, the Revenue Minister passed an order dated 27-2-2004, directing to de-notify the land from acquisition.

The order dated 27-2-2004 however, was not complied with as the Deputy Secretary to the State Government made an endorsement dated 21-9-2005 that the matter had attained finality after being decided by the Supreme Court vide judgment dated 11-12-2000 and possession of the land had already been taken and handed over to the respondent Society on 6-9-2002.

The present petitioners then filed writ petition before the High Court to quash the said endorsement dated 21-9-2005. The writ petition as well as the writ appeal both came to be dismissed. Hence, the present SLPs.

Dismissing the SLPs, the Supreme Court

Held :

At the time of purchase of the suit land by the present petitioners the matter was sub judice before the Supreme Court and if the order of denotification dated 5-8-1993 stood quashed, it would automatically revive the land acquisition proceedings meaning thereby the notification under Section 4 of the Land Acquisition Act, 1894 and declaration under Section 6 of the LA Act resurfaced by operation of law. In such a fact situation, it is not permissible for the present petitioners to argue that merely because there was no interim order in the appeal filed by the respondent Society, the petitioners had a right to purchase the land during the pendency of the litigation and would not be bound by the order of the Supreme Court quashing the denotification of acquisition proceedings. (Para 10)

The doctrine of lis pendens is based on legal maxim *ut lite pendente nihil innovetur* (during a litigation nothing new should be introduced). This doctrine stood embodied in Section 52 of the Transfer of Property Act, 1882. The principle of "lis pendens" is in accordance with the equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. A litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. However, it must be clear that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The law simply postulates a condition that the alienation will, in no manner, affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court. The transferee cannot deprive the successful plaintiff of the fruits of the decree if he purchases the property pendente lite. (Para 11)

K. Adivi Naidu v. *E. Duruvasulu Naidu*, (1995) 6 SCC 150; *Venkatrao Anantdeo Joshi* v. *Malatibai*, (2003) 1 SCC 722; *Raj Kumar* v. *Sardari Lal*, (2004) 2 SCC 601; *Sanjay Verma* v. *Manik Roy*, (2006) 13 SCC 608; *Rajender Singh* v. *Santa Singh*, (1973) 2 SCC 705; *T.G. Ashok Kumar* v. *Govindammal*, (2010) 14 SCC 370 : (2012) 1 SCC (Civ) 489, *relied on*

In view of the above, it is not permissible to say that in case the petitioners had purchased the suit property during the pendency of the appeal filed by the respondent Society before the Supreme Court, the petitioners are not bound by the final orders of the Supreme Court. However, it is made clear that the petitioners shall be entitled to compensation as determined under the provisions of the LA Act. (Paras 13 and 20)

K.N. Aswathanarayana Setty v. *State of Karnataka*, Writ Appeal No. 1421 of 2008, decided on 24-10-2011 sub nom *Ruksana Parveen* v. *State of Karnataka*, Writ Appeal No. 1014 of 2008 (KAR); *K.N. Aswathanarayana Setty* v. *State of Karnataka*, WP No. 11502 of 2006, decided on 17-4-2008 (KAR), *affirmed*

M.V. Kasturi v. *State of Karnataka*, ILR 2008 KAR 3961 : (2009) 3 Kant LJ 340, *impliedly approved*

State Govt. Houseless Harijan Employees' Assn. v. *State of Karnataka*, (2001) 1 SCC 610, *explained*

K.N. Aswathnarayana Shetty v. *State of Karnataka*, WP No. 19968 of 2002, decided on 19-2-2003 (KAR), *referred to*

In order to meet the menace of sale of land after initiation of acquisition proceedings, various States enacted statutes and made such transfers punishable e.g. the Delhi Lands (Restrictions on Transfer) Act, 1972 made the sales permissible only after grant of permission for transfer by the authority prescribed therein. In absence of such permission if the sale is made in contravention of the statutory provisions it is a punishable offence. (Para 16)

There is ample evidence on record to show that possession of the suit land had been taken on 6-9-2002. In such a fact situation, question of denotifying the acquisition of land could not arise. Thus, the order dated 27-2-2004 could not be passed. There cannot be a dispute in law that upon possession being taken under Section 16 or 17 of the LA Act, the land vests in the State free from all encumbrances. Thus, in case possession of the land has been taken, application for release of land from acquisition is not maintainable. Once the land is vested in the State free from encumbrances, it cannot be divested. (Para 18)

Lt. Governor of H.P. v. *Avinash Sharma*, (1970) 2 SCC 149; *Satendra Prasad Jain* v. *State of U.P.*, (1993) 4 SCC 369; *Mandir Shree Sita Ramji* v. *Collector (LA)*, (2005) 6 SCC 745; *Sulochana Chandrakant Galande* v. *Pune Municipal Transport*, (2010) 8 SCC 467 : (2010) 3 SCC (Civ) 415, *relied on*

D. **Land Acquisition Act, 1894 — Ss. 9, 4 and 6 — Sale of land subsequent to notification under S. 4 — Rights of purchaser — Limited rights — Held, subsequent purchaser can only claim compensation as he steps into shoes of erstwhile owner but he cannot challenge validity of acquisition proceedings — Property Law — Transfer of Property Act, 1882 — S. 8 — Purported transfer of property after initiation of acquisition proceedings**

Held :

A person who purchases land subsequent to the issuance of a notification under Section 4 of the Land Acquisition Act, 1894 with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever,

for the reason that the sale deed executed in his favour does not confer upon him any title and at the most he can claim compensation on the basis of his vendor's title. (Para 15)

V. Chandrasekaran v. *Administrative Officer*, (2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : (2013) 4 SCC (Cri) 587 : (2013) 3 SCC (L&S) 416, *followed*

Lila Ram v. *Union of India*, (1975) 2 SCC 547; *Sneh Prabha* v. *State of U.P.*, (1996) 7 SCC 426; *Meera Sahni* v. *Lt. Governor of Delhi*, (2008) 9 SCC 177; *Tika Ram* v. *State of U.P.*, (2009) 10 SCC 689 : (2009) 4 SCC (Civ) 328, *relied on*

O-M/A/52636/SV

Advocates who appeared in this case :

Kailash Vasdev and P. Vishwanath, Senior Advocates (Girish Ananthmurthy, Umrao Singh Rawat and Ms Vaijayanthi Girish, Advocates) for the Petitioners;

Rama Jois and K.N. Bhat Shetty, Senior Advocates (S.N. Bhat, D.P. Chaturvedi, Ravi Panwar, Dasharath T.M., V.N. Raghupathy and Anantha Narayana M.G., Advocates) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : (2013) 4 SCC (Cri) 587 : (2013) 3 SCC (L&S) 416, *V. Chandrasekaran* v. *Administrative Officer* 400*g*
2. Writ Appeal No. 1421 of 2008, decided on 24-10-2011, *K.N. Aswathanarayana Setty* v. *State of Karnataka* sub nom *Ruksana Parveen* v. *State of Karnataka*, Writ Appeal No. 1014 of 2008 (KAR) 398*a*, 398*c-d*, 399*b*
3. (2010) 14 SCC 370 : (2012) 1 SCC (Civ) 489, *T.G. Ashok Kumar* v. *Govindammal* 400*e-f*
4. (2010) 8 SCC 467 : (2010) 3 SCC (Civ) 415, *Sulochana Chandrakant Galande* v. *Pune Municipal Transport* 402*c*
5. (2009) 10 SCC 689 : (2009) 4 SCC (Civ) 328, *Tika Ram* v. *State of U.P.* 401*c*
6. (2008) 9 SCC 177, *Meera Sahni* v. *Lt. Governor of Delhi* 401*c*
7. ILR 2008 KAR 3961 : (2009) 3 Kant LJ 340, *M.V. Kasturi* v. *State of Karnataka* 399*b*
8. WP No. 11502 of 2006, decided on 17-4-2008 (KAR), *K.N. Aswathanarayana Setty* v. *State of Karnataka* 398*a*, 398*c-d*, 399*a-b*
9. (2006) 13 SCC 608, *Sanjay Verma* v. *Manik Roy* 400*d*
10. (2005) 6 SCC 745, *Mandir Shree Sita Ramji* v. *Collector (LA)* 402*c*
11. (2004) 2 SCC 601, *Raj Kumar* v. *Sardari Lal* 400*d*
12. (2003) 1 SCC 722, *Venkatrao Anantdeo Joshi* v. *Malatibai* 400*d*
13. WP No. 19968 of 2002, decided on 19-2-2003 (KAR), *K.N. Aswathnarayana Shetty* v. *State of Karnataka* 398*e-f*
14. (2001) 1 SCC 610, *State Govt. Houseless Harijan Employees' Assn.* v. *State of Karnataka* 398*d*, 401*f-g*
15. (1996) 7 SCC 426, *Sneh Prabha* v. *State of U.P.* 401*b-c*
16. (1995) 6 SCC 150, *K. Adivi Naidu* v. *E. Duruvasulu Naidu* 400*d*
17. (1993) 4 SCC 369, *Satendra Prasad Jain* v. *State of U.P.* 402*c*
18. (1975) 2 SCC 547, *Lila Ram* v. *Union of India* 401*b-c*
19. (1973) 2 SCC 705, *Rajender Singh* v. *Santa Singh* 400*d-e*
20. (1970) 2 SCC 149, *Lt. Governor of H.P.* v. *Avinash Sharma* 402*b-c*

The Judgment of the Court was delivered by

DR B.S. CHAUHAN, J.— These petitions have been filed against the judgment and order dated 24-10-2011, passed by the High Court of Karnataka

at Bangalore in *K.N. Aswathanarayana Setty* v. *State of Karnataka*[1], etc. affirming the judgment of the learned Single Judge dated 17-4-2008 passed in *K.N. Aswathanarayana Setty* v. *State of Karnataka*[2], by which and whereunder the Court had quashed the order dated 27-2-2004, passed by the Revenue Minister, Government of Karnataka denotifying the suit land from acquisition.

2. The facts and circumstances giving rise to these petitions are: that a preliminary notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") was issued in respect of huge chunk of land including Survey No. 49/1 admeasuring 15 acres on 6-8-1991 for the benefit of the State Government Houseless Harijan Employees Association (Regd.) (hereinafter referred to as "the Society"). In respect of the same land declaration under Section 6 of the 1894 Act was issued on 15-5-1992. At the behest of the then owners of the suit land the Government denotified the land from acquisition vide Order dated 5-8-1993 issuing notification under Section 48(1) of the 1894 Act. Aggrieved, Respondent 3 Society, challenged the said order of denotifying the land from acquisition by filing writ petition which was dismissed[2] by the learned Single Judge. The said order was also affirmed by the Division Bench[1] dismissing the writ appeal preferred by the Society. The Society approached this Court by filing special leave petitions which were entertained and finally heard Civil Appeal No. 5015 of 1999, etc. and this Court vide judgment and order dated 11-12-2000[3] quashed the order dated 5-8-1993 denotifying the suit land from acquisition.

3. During the pendency of Civil Appeal No. 5015 of 1999, etc. filed by the respondent Society, the present petitioners purchased the suit land in the years 1997-1998 and approached the Government of Karnataka to denotify the said land from acquisition. As their application for release was not dealt with by the Government, they preferred Writ Petitions Nos. 19968-97 of 2002, etc. before the High Court for directions to the Government to release the land. The High Court vide judgment and order dated 19-2-2003[4] disposed of the said writ petition, directing the Government to decide their application in accordance with law expeditiously. In pursuance of the High Court order, the Government of Karnataka issued notice to all parties concerned and against all the parties the Hon'ble Revenue Minister passed an order dated 27-2-2004, directing to denotify the land from acquisition.

4. The order dated 27-2-2004 was not complied with as the Deputy Secretary to the Government of Karnataka raised certain objections and made an endorsement dated 21-9-2005 that the matter had attained finality after being decided by this Court and possession of the land had already been taken and

1 Writ Appeal No. 1421 of 2008, decided on 24-10-2011 sub nom *Ruksana Parveen* v. *State of Karnataka*, Writ Appeal No. 1014 of 2008 (KAR)
2 WP No. 11502 of 2006, decided on 17-4-2008 (KAR)
3 *State Govt. Houseless Harijan Employees' Assn.* v. *State of Karnataka*, (2001) 1 SCC 610 : AIR 2001 SC 437
4 *K.N. Aswathnarayana Shetty* v. *State of Karnataka*, WP No. 19968 of 2002, decided on 19-2-2003 (KAR)

handed over to the respondent Society on 6-9-2002, much prior to the order passed by the Hon'ble Minister.

5. The present petitioners filed Writ Petition No. 11502 of 2006, etc. before the High Court to quash the endorsement dated 21-9-2005 made by the learned Deputy Secretary, Government of Karnataka. The writ petition stood dismissed on 17-4-2008[2] in terms of the judgment of the same date in a similar case i.e. *M.V. Kasturi* v. *State of Karnataka*[5].

6. Aggrieved, the petitioners preferred Writ Appeal No. 1421 of 2008 which has been dismissed by the impugned judgment and order[1]. Hence, these petitions.

7. Shri Kailash Vasdev, learned Senior Counsel appearing for the petitioners submitted that the courts below have committed an error in dismissing the case of the petitioners as the courts failed to appreciate the legal issues. This Court set aside the order of denotification dated 5-8-1993 on a technical ground as the order of denotification was passed without hearing the respondent Society for whose benefit the land had been acquired. Thus, there could be no prohibition for the State to denotifying the land from acquisition after hearing the parties concerned. More so, the Hon'ble Minister had competence to deal with the acquisition proceedings and thus the finding recorded by the High Court about his competence is perverse. More so, as there was no interim order of this Court in the Society's appeal, the petitioners could purchase the land. Hence, these petitions should be accepted.

8. Per contra, Shri Rama Jois and Shri K.N. Bhat, learned Senior Counsel for the respondents have opposed the petitions contending that this Court has set aside the order dated 5-8-1993 denotifying the land from acquisition not only on the ground of violation of principles of natural justice but also on merits as it had been held by this Court that there was no justification for denotifying the land. The present petitioners are purchasers of land subsequent to notification under Section 4(1) of the 1894 Act, and they could not purchase the land at all. In view of the fact that the appeal filed by Respondent 3 against the order dated 5-8-1993 was pending before this Court, the doctrine of lis pendens would apply. Thus, the petitions are liable to be dismissed.

9. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

10. The facts are not in dispute. At the time of purchase of the suit land by the present petitioners the matter was sub judice before this Court and if the order of denotification dated 5-8-1993 stood quashed, it would automatically revive the land acquisition proceedings meaning thereby the notification under Section 4 and declaration under Section 6 resurfaced by operation of law. In such a fact situation, it is not permissible for the present petitioners to argue that

2 *K.N. Aswathanarayana Setty* v. *State of Karnataka*, WP No. 11502 of 2006, decided on 17-4-2008 (KAR)
5 ILR 2008 KAR 3961 : (2009) 3 Kant LJ 340
1 *K.N. Aswathanarayana Setty* v. *State of Karnataka*, Writ Appeal No. 1421 of 2008, decided on 24-10-2011

merely because there was no interim order in the appeal filed by Respondent 3, the petitioners had a right to purchase the land during the pendency of the litigation and would not be bound by the order of this Court quashing the denotification of acquisition proceedings.

11. The doctrine of lis pendens is based on legal maxim *ut lite pendente nihil innovetur* (during a litigation nothing new should be introduced). This doctrine stood embodied in Section 52 of the Transfer of Property Act, 1882. The principle of "lis pendens" is in accordance with the equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. A litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. However, it must be clear that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The law simply postulates a condition that the alienation will, in no manner, affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court. The transferee cannot deprive the successful plaintiff of the fruits of the decree if he purchased the property pendente lite. (Vide *K. Adivi Naidu* v. *E. Duruvasulu Naidu*[6], *Venkatrao Anantdeo Joshi* v. *Malatibai*[7], *Raj Kumar* v. *Sardari Lal*[8] and *Sanjay Verma* v. *Manik Roy*[9].)

12. In *Rajender Singh* v. *Santa Singh*[10], while dealing with the application of doctrine of lis pendens, this Court held as under: (SCC p. 711, para 15)

> "*15.* The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject-matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree."

(See also *T.G. Ashok Kumar* v. *Govindammal*[11].)

13. In view of the above, we are of the considered opinion that it is not permissible to say that in case the petitioners had purchased the suit property during the pendency of the appeal filed by Respondent 3 before this Court, the petitioners are not bound by the final orders of this Court.

14. By operation of law, as this Court quashed the denotification of acquisition proceedings, the proceedings stood revived. In *V. Chandrasekaran* v. *Administrative Officer*[12], this Court considered the right of purchaser of land subsequent to the issuance of Section 4 notification and held that anyone who

6 (1995) 6 SCC 150
7 (2003) 1 SCC 722
8 (2004) 2 SCC 601
9 (2006) 13 SCC 608
10 (1973) 2 SCC 705
11 (2010) 14 SCC 370 : (2012) 1 SCC (Civ) 489
12 (2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : (2013) 4 SCC (Cri) 587 : (2013) 3 SCC (L&S) 416

deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be "an impediment to anyone to encumber the land acquired thereunder". The alienation thereafter does not bind the State or the beneficiary under the acquisition. In fact, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person interested in compensation, since he steps into the shoes of the erstwhile owner and may therefore, merely claim compensation. Thus, the purchaser cannot challenge the acquisition proceedings. While deciding the said case this Court placed reliance on a very large number of its earlier judgments including *Lila Ram* v. *Union of India*[13], *Sneh Prabha* v. *State of U.P.*[14], *Meera Sahni* v. *Lt. Governor of Delhi*[15] and *Tika Ram* v. *State of U.P.*[16]

15. The law on the issue can be summarised to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him any title and at the most he can claim compensation on the basis of his vendor's title.

16. In order to meet the menace of sale of land after initiation of acquisition proceedings, various States enacted the Acts and making such transfers as punishable e.g. the Delhi Lands (Restrictions on Transfer) Act, 1972 made the sales permissible only after grant of permission for transfer by the authority prescribed therein. In absence of such permission if the sale is made in contravention of the statutory provisions it is a punishable offence with imprisonment for a term which may extend to 3 years or with fine or with both. Therefore, we do not see any cogent reason to accept any plea taken by the petitioners that they could purchase the suit land even subsequent to Section 4 notification.

17. We do not find force in the submission made by Shri Kailash Vasdev, learned Senior Counsel that this Court had quashed the denotification of acquisition proceedings only on technical ground as the respondent Society was not heard. This Court in *State Govt. Houseless Harijan Employees' Assn.* v. *State of Karnataka*[3] held as under: (SCC p. 631, para 72)

> "*72.* From all this, the ultimate position which emerges is that the acquisition in favour of the appellant was properly initiated by publication of the notification under Section 4(1) and by the declaration issued under Section 6. The withdrawal of the acquisition under Section 48(1) was vitiated *not only* because the appellant was not heard *but also because the*

13 (1975) 2 SCC 547
14 (1996) 7 SCC 426
15 (2008) 9 SCC 177
16 (2009) 10 SCC 689 : (2009) 4 SCC (Civ) 328
3 (2001) 1 SCC 610 : AIR 2001 SC 437

reason for withdrawal was wrong. The High Court erred in dismissing the appellant's writ petition. The decision of the High Court is accordingly set aside. The impugned notification under Section 48(1) is quashed and the appeal is allowed with costs." (emphasis added)

18. There is ample evidence on record to show that possession of the suit land had been taken on 6-9-2002. In such a fact situation, question of denotifying the acquisition of land could not arise. Thus, the order dated 27-2-2004 could not be passed. There cannot be a dispute in law that upon possession being taken under Section 16 or 17 of the 1894 Act, the land vests in the State free from all encumbrances. Thus, in case possession of the land has been taken, application for release of land from acquisition is not maintainable. Once the land is vested in the State free from encumbrances, it cannot be divested. (See *Lt. Governor of H.P.* v. *Avinash Sharma*[17], *Satendra Prasad Jain* v. *State of U.P.*[18], *Mandir Shree Sita Ramji* v. *Collector (LA)*[19] and *Sulochana Chandrakant Galande* v. *Pune Municipal Transport*[20].)

19. In view of the above, we do not think it necessary to examine the other issues raised in the petitions particularly, the competence of the Hon'ble Minister to deal with the matter.

20. The petitions are devoid of any merit and are accordingly dismissed. However, it is made clear that the petitioners shall be entitled to compensation as determined under the provisions of the 1894 Act.

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17 (1970) 2 SCC 149
18 (1993) 4 SCC 369
19 (2005) 6 SCC 745
20 (2010) 8 SCC 467 : (2010) 3 SCC (Civ) 415